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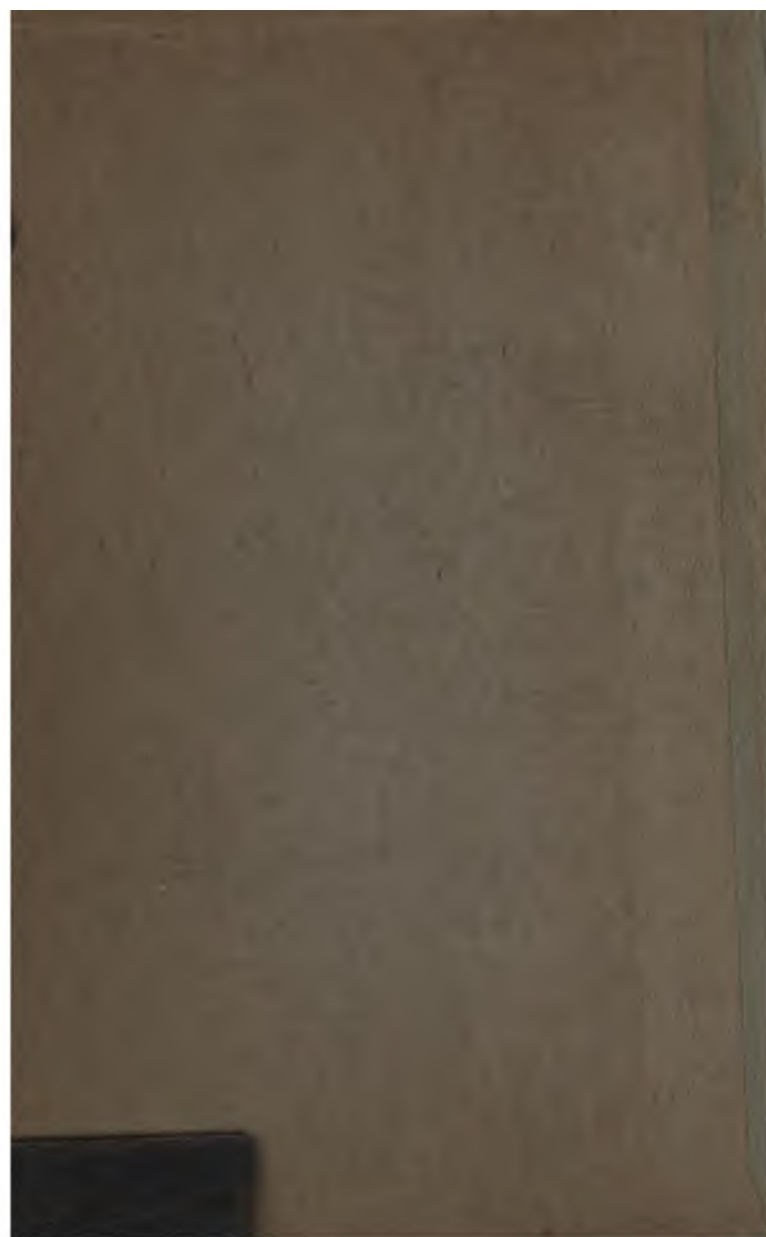
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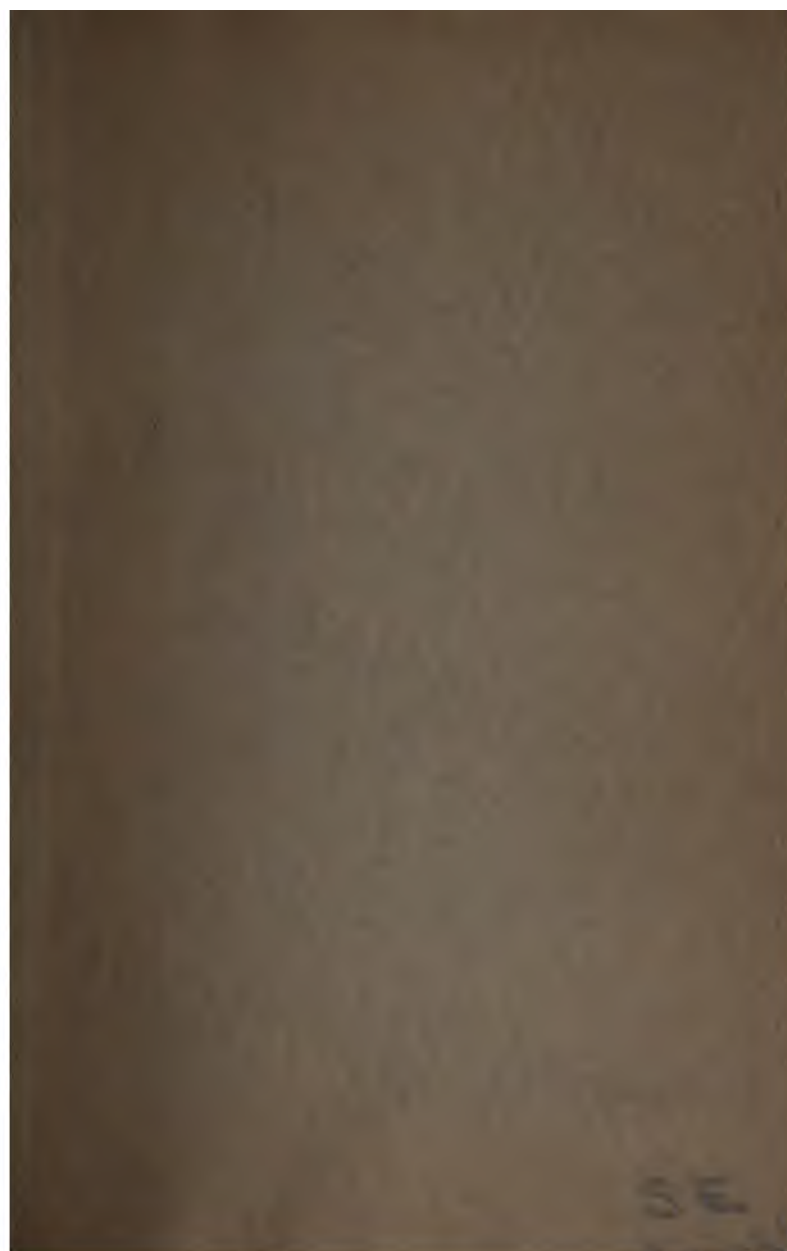
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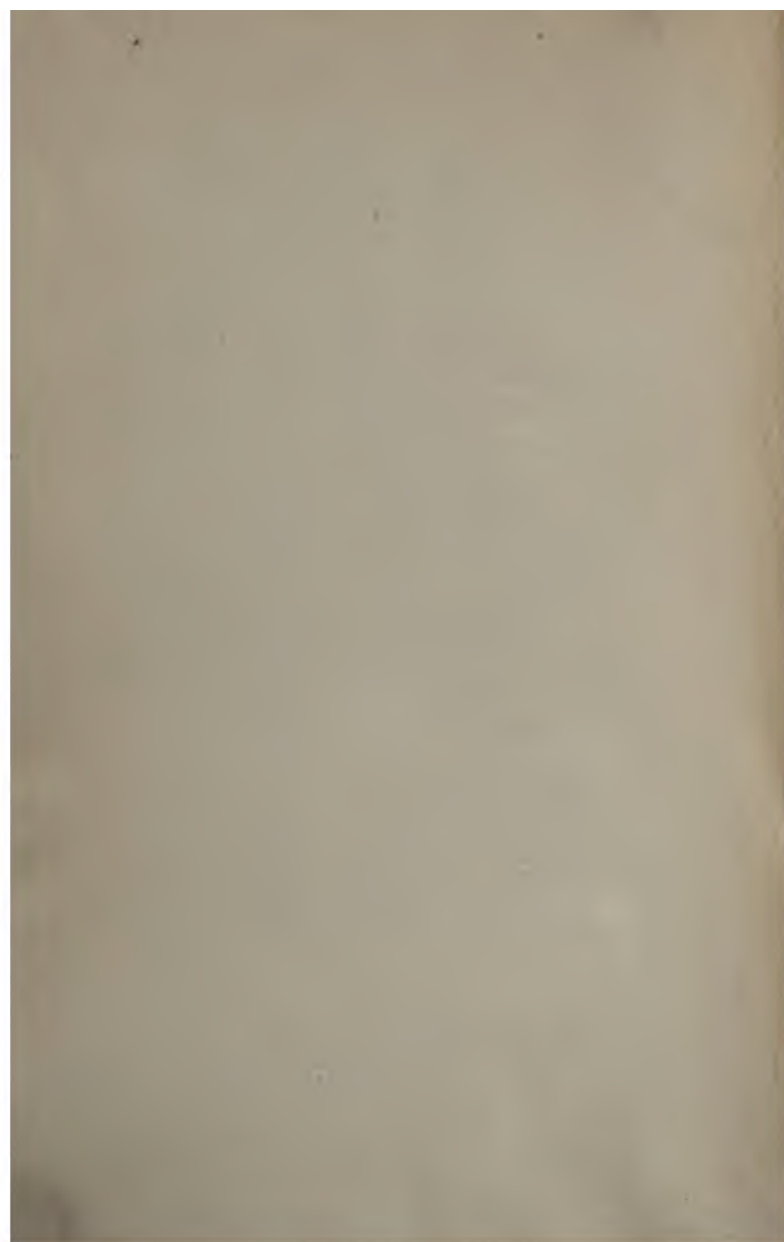
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FORMING
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ON SUBJECTS OF
CIVIL ADMINISTRATION, POLITICAL ECONOMY, FINANCE,
COMMERCE, LAWS AND SOCIAL RELATIONS.

Charles Knight

IN FOUR VOLUMES.

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speaking of this proceeding, Lord Brough expressed his surprise that a judge should have been quashed for having given a judgment as no other judge who ever sat in lace could have differed from."

In the case of Ashby and White so referred to, the commons declared that whoever shall presume to commence any action, and all attorneys, solicitors, counsellors, and serjeants-at-law, prosecuting, or pleading in any way guilty of a high breach of the laws of this house." The effect of resolution, if obeyed, would be to shut the courts from coming to any law at all upon matters of privilege; action would be stopped at its commencement; but the principle has not adhered to.

When Sir Francis Burdett brought action against the Speaker and the serjeant-at-arms, in 1810, for taking him to answer in obedience to the orders of house of Commons, they were directed to plead, and the attorney-general refused instructions to defend them. A notice at the same time reported a motion "that the bringing these actions acts done in obedience to the orders of the house is a breach of privilege" but it was not adopted by the commons. The actions proceeded in the usual course, and the Court of King's Bench sustained and vindicated the authority of the house.

It has been already said that Stockdale's first action was brought when the commons was not sitting. Having received specific directions from the commons, Messrs. Hansard pleaded to the action, and the commons then proved the breach of the house, which were held to be a breach of privilege, but had judgment upon the action which would have availed them if they had they printed the report composed of on their own account. Notwithstanding its resolutions, the commons, being acquainted with this action, instead of acting upon them when a second commenced, reverted to the proceedings of 1810, and directed Messrs. Hansard to plead, and the attorney-general defended them. In this case nothing was said of the privilege of the House of Commons.

Messrs. Hansard were relied upon in defence of Messrs. Hansard, and the Court of Queen's Bench unanimously decided against them. Still the House of Commons was reluctant to act upon its own resolutions, and instead of punishing the plaintiff and his legal advisers, "under the special circumstances of the case," it ordered the damages and costs to be paid. The resolutions however were not rescinded, and it was then determined that in case of future actions, Messrs. Hansard should not plead at all; and that the parties should suffer for their contempt of the resolutions and authority of the house. Another action was brought by the same person and for the same publication. Messrs. Hansard did not plead, the judgment went against them by default, and the damages were assessed by a jury in the sheriff's court at 600*l*. The sheriffs of Middlesex levied for that amount, but having been served with copies of the resolutions of the house, they were anxious not to pay the money to Stockdale until they were unable to delay the payment any longer. At the opening of the session of parliament in 1840, the money was still in their hands. The House of Commons at once entered on the consideration of these proceedings, which had been carried on in spite of its resolutions, and in the first place committed Stockdale to the custody of the serjeant-at-arms. The sheriffs were desired to refund the money, and, on their refusal, were also committed. Mr. Howard, the solicitor of Mr. Stockdale, was suffered to escape with a reprimand. The sheriffs retained possession of the money until an attachment was issued from the Queen's Bench, when they paid it over to Stockdale. Stockdale, while in prison, commenced a fourth action by the same solicitor, and with him was committed to Newgate for the offence; and Messrs. Hansard were again ordered not to plead. Once more judgment was entered up against them, and a writ of inquiry of damages issued.

Mr. France, the under-sheriff, upon whom the execution of this writ devolved, having been served with the resolutions of the commons, expressed, by petition, his anxiety to pay obedience to them, and sought the protection of

the house. He then obtained leave to show cause before the court of Queen's Bench on the fourth day of Easter term why the writ of inquiry should not be executed. Meanwhile the imprisonment of the plaintiff and his attorney did not prevent the prosecution of further actions. Mr. Howard's son, and his clerk, Mr. Pearce, having been concerned in conducting such actions, were committed for the contempt, and Messrs. Hansard, as before, were instructed not to plead. At length, as there appeared to be no probability of these vexatious actions being discontinued, a bill was introduced into the commons and passed, by which proceedings, criminal or civil, against persons for publication of papers printed by order of either house of parliament, are to be stayed by the courts, upon delivery of a certificate and affidavit to the effect that such publication is by order of parliament. (Act 3 & 4 Vict. c. 9.)

In executing the Speaker's warrant for taking Mr. Howard into custody, the messengers had remained some time in his house, for which he brought an action of trespass against them. As it was possible that they might have exceeded their authority, and as the right of the house of commons was not directly brought into question, the defendants were, in this case, instructed to plead; although a clause for staying further proceedings in the action was contained in the bill which was pending, at that time, in the house of lords; by whom however it was afterwards omitted; and the house of commons is still involved in litigation on account of the exercise of its privileges.

Mr. May remarks ('Law, Privileges, &c. of Parliament') that "The present position of privilege is, in the highest degree, unsatisfactory. Assertions of privilege are made in parliament, and denied in the courts; the officers who execute the orders of parliament are liable to vexatious actions, and if verdicts are obtained against them, the damages and costs are paid by the Treasury. The parties who bring such actions, instead of being prevented from proceeding with them by some legal process acknowledged by the courts, can only be coerced by an unpopular exercise of privilege,

which does not stay the actions. parliament were to act strictly upon their own declarations, it would be forced to commit not only the parties, but the counsel and their attorneys, the judges and the sheriffs; and so great would be the injustice of punishing the public officers of justice for administering the law according to their consciences and oaths, that parliament would shrink from so violent an exertion of privilege. Again, the intermediate course adopted in the case of Stockdale v. Hansard, of ordering the sheriff for executing the judgment of the court, and allowing the judges who gave the obnoxious judgment to pass without censure, is inconsistent in principle, and betrays hesitation on the part of the house, distrust of its own authority, or fear of public opinion" (p. 12130).

Forms of Procedure.

Meeting of Parliament: Preliminary Proceedings.—On the meeting of a new parliament it is the practice for the lord chancellor, with other peers appointed in commission under the great seal for that purpose, to open the parliament by stating "that her Majesty will, as soon as the members of both houses shall be sworn declare the causes of her calling the parliament; and it being necessary, the Speaker of the house of commons should be first chosen, that you, gentlemen of the house of commons, repair to the place where you are to sit, and there proceed to the appointment of some proper person to be your Speaker; and that you present such person whom you shall so choose here, to-morrow (at an hour stated) for her Majesty's royal approbation." The commons then proceed at once to the election of their Speaker. If any debate arises, the clerk at the table acts as Speaker, and standing up, points to the members as they rise. He also puts the question. When the speaker is chosen his proposer and seconder conduct him to the chair, where, standing on the upper step, he thanks the house and takes his seat. It is usual for some member to congratulate him when he has taken the chair. As yet he is only speaker elect, and as such presents himself on the

ing day in the house of lords, it has been customary for him to sit at the lords' commissioners that none of the commons has "fallen him," that he feels the difficulties of a high and arduous office, and that, "if not for her Majesty's pleasure to come of this choice, her majesty's commons will at once select some member of their house better qualified to fill the station than himself." It is by Russell, that there have been no commons "in which neither the office of having the royal permission to sit in the election of a Speaker, nor even of the king's approbation of the commons, have been observed, not in the election of Sir Hasbottle Jones, on the 25th of April, 1660; Speaker of the Convention Parliament, which met at the Restoration; the election of Mr. Powle, 22nd May, 1689-90, in the Convention Parliament at the Revolution." The only case of the royal approbation being that in the case of Sir Edward Dyer in 1679. Sir John Topham was chosen Speaker in 1456, but was not admitted by the king, and it was chosen by the commons in 1601. In order to avoid a similar thing on the part of the king, Sir John Heymeyer, who knew that it had determined to accept his name, did the usual form. Of late years the speaker's address, upon this occasion, are very considerably modified. Ray's 'Parliament,' p. 197.) The Speaker has been approved, claims on behalf of the commons, inside petition, to all their ancient admitted rights and privileges," being confirmed, the Speaker with commons retires from the bar of the house of lords. The house then proceed to take the oaths required by law. In the commons order takes them before any other thing. Three or four days are usually set in this duty before the question is both houses, in person or by proxy, the names of calling the parties. From this time business proceeds regularly. The first thing usually in both houses is to vote an ad-

dress in answer to the speech from the throne.

Before any business is undertaken, prayers are read; in the house of lords by a bishop, and in the commons by their chaplain. The lords usually meet at five o'clock in the afternoon, the commons at four.

Conduct of Business, Division, &c.—In the house of lords business may proceed when three peers are present, but forty members are required to assist in the deliberations of the lower house. If that number be not present at five o'clock in the afternoon, or if notice be taken, or if it appear on a division, that less than that number are present, the Speaker adjourns the house until the next sitting day. In both houses all questions are decided by a majority, but in the lords proxies are counted, while in the commons none may vote but those present in the house when the question is put by the Speaker or chairman. When any question arises upon which a difference of opinion is expressed, it becomes necessary to ascertain the numbers on each side. In the lords, the party in favour of the question are called "contents," and that opposed to it "not-contents." In the commons these parties are described as the "ayes" and "noes." When the Speaker cannot decide by the voices which party has the majority, or when his decision is disputed, a division takes place. This is effected in the lords by sending the "contents" or "not-contents," as the case may be, to the other side of the bar, and leaving one party in the house. Each party is then counted separately. The practice in the other house, until 1550, was to send one party forth into the lobby, the other remaining in the house. Two tellers for each party then counted the numbers, and reported them. In 1835 it was thought advisable to adopt some mode of recording the names of members who voted, and for this purpose several contrivances were proposed. The one adopted and now in operation is this:—There are two lobbies, one at each end of the house; and on a division the house is entirely cleared, each party being sent to each of the lobbies. Two clerks are stationed at each of them

entrances to the house, holding lists of the members in alphabetical order printed upon large sheets of thick pasteboard so as to avoid the trouble and delay of turning over pages. While the members are passing into the house again, the clerks place a mark against each of their names, and the tellers count the number. These sheets of pasteboard are sent off to the printer, who prints the marked names in their order; and the division lists are then delivered on the following morning together with the votes and proceedings of the house. This plan has been quite successful; the names are taken down with great accuracy, and very little delay is occasioned by the process.

In committees of the whole house, divisions are to be taken by the members of each party crossing over to the opposite side of the house, unless five members require that the names shall be noted in the usual manner; but practically no such distinction is now observed.

In addition to the power of expressing assent or dissent by a vote, peers may record their opinion and the grounds of it by a "protest," which is entered in the Journals, together with the names of all the peers who concur in it.

When matters of great interest are to be debated in the upper house, the lords are "summoned;" and in the house of commons an order is occasionally made that the house be called over, and members not attending when their names are called, are reported as defaulters, and ordered to attend on another day, when, if they are still absent and no excuse be offered, they are sometimes committed to the custody of the serjeant-at-arms.

The business which occupies nearly the whole attention of both houses (if we except the hearing of appeals by the lords and the trial of controverted elections by the commons) is the passing of bills; and the mode of proceeding with respect to them may be briefly described in the first place.

Bills, Public and Private.

Bills are divided into two classes—such as are of a public nature affecting the general interests of the state, and such as relate only to local or private

matters. The former are introduced directly by members; the latter brought in upon petitions from the interested, after the necessary notices been given, and all forms requiring the standing orders have been complied with.

With few exceptions, public bills originate in either house, unless for granting supplies of any kind, which involve directly or indirectly the levy or appropriation of any tax or fine on the people. The exclusive right of commons to deal with all legislation of this nature affects very extensive practice of introducing private bills in either house. Thus, all those which authorise the levying of local tolls or are brought in upon petition to the house. These compose by far the greater part of all private bills. All measures of local improvement, whether for emendation of land, lighting, watching, and improvement of towns, establishing police, or for roads, bridges, railways, canals, or public works, originate in the commons. On the other hand, many bills of a personal nature are always sent down to the lords, such as bills affecting peerages, estates, and for dissolving marriages. On a question of principle it is perhaps avoidable that so large a proportion must begin in one house, but no obstruction to business and a very unequal division of labour are the results. The practice, which will be relieved, if any measure, by the arrangement alluded to (p. 459) in regard to private bills. Bills affecting the peerage originate in the lords, and acts of grace with the crown, where the prerogative of mercy is vested.

Progress of Bills: Public Bill.—The house of lords any member may present a bill; and in the commons motions for leave to bring in bills of a public nature are not very frequently used. The more usual time for opposition measure in its progress is on the second reading, when all the provisions are known, and the general principle of them may be considered. In the commons leave is given to bring in a bill, and members are ordered to prepare it, the proposer and second of the

to whom others are sometimes added. It is then brought in and read a first time, and a day is fixed for the second reading, which generally leaves a sufficient interval for the printing and circulation of the bill.

It has been already said that the second reading is the occasion on which a bill is more particularly discussed. Its principle is at that time made the subject of discussion, and if it meet with approval, the bill is committed, either to a committee of the whole house or to a select committee, to consider its several provisions in detail. A committee of the whole house is in fact the house itself, in the absence of the Speaker from the chair; but the rule which allows members to speak as often as they think fit, instead of restricting them to a single speech, as at other times, affords great facilities for the careful examination and full discussion of details. The practice of referring bills of an intricate and technical description to select committees has become very prevalent of late years, and might be extended with advantage. Many bills are understood by a few members only, whose observations are listened to with impatience, and thus valuable suggestions are often withheld in the house, which in a committee might be embodied in the bill. By leaving such bills to a select committee, the house is enabled to attend to measures more generally interesting, while other business, of perhaps equal importance, is proceeding at the same time; and it has always the opportunity of revising amendments introduced by the committee.

Before a bill goes into committee there are certain blanks for dates, amount of penalties, &c., which are filled up in this stage. Bills of importance are often recommittees, or in other words, pass twice, and even in some instances three or four times through the committee. When the proceedings in committee are terminated, the bill is reported with the amendments to the house, on which occasion they are agreed to, amended, or disagreed to, as the case may be. If many amendments have been made, it is a common and very useful practice to reprint the bill before the report is taken

into consideration. After the report has been agreed to, the bill with the amendments is ordered to be engrossed previous to the third reading. A proposition was made not long since, but without success, for discontinuing the custom of engrossment upon parchment, and for using an examined copy of the printed bill, signed by the clerk of the house, for all the purposes for which the engrossed copy is now required.

The third reading is a stage of great importance, on which the entire measure is reviewed, and the house determines whether, after the amendments that have been made on previous stages, it is fit on the whole to pass and become law. The question, "that this bill do pass," which immediately succeeds the third reading, is usually no more than a form, but there have been occasions on which that question has been opposed, and even negatived. The title of the bill is settled last of all.

An interval of some days usually elapses between each of the principal stages of a bill; but when there is any particular cause for haste, and there is no opposition, these delays are dispensed with, and the bill is allowed to pass through several stages, and occasionally through all, on the same day.

This statement of the progress of bills applies equally to both houses of parliament. There is however a slight distinction in the title of a bill while pending in the lords, which is always entitled "an act," whether it has originated in the lords or has been brought up from the commons.

When the commons have passed a bill, they send it to the lords by one of their own members, who is usually accompanied by not less than eight other members. The lords send down bills by two masters in chancery; unless they relate to the crown or the royal family, in which case they are generally sent by two judges.

Some further information on this subject will be found under BILL IN PARLIAMENT.

Private Bills.—In deliberating upon private bills parliament may be considered as acting judicially as well as in its legislative capacity. The conflicting in-

terests of private parties, the rights of individuals, and the protection of the public have to be reconciled. Care must be taken, in furthering an apparently useful object, that injustice be not done to individuals, although the public may derive advantage from it. Vigilance and caution should be exercised lest parties professing to have the public interests in view should be establishing, under the protection of a statute, an injurious monopoly. The rights of landowners among themselves, and of the poor, must be scrutinised in passing an enclosure bill. Every description of interest is affected by the making of a railway. Land, houses, parks, and pleasure-grounds are sacrificed to the superior claim of public utility over private rights. The repugnance of some proprietors to permit the line to approach their estates—the eagerness of others to share in the bounty of the company and to receive treble the value of their land, embarrass the decision of parliament as to the real merits of the undertaking, which would be sufficiently difficult without such contentions. If a company receive authority to disturb the rights of persons not interested in their works, it is indispensable that ample security be taken that they are able to complete them so as to attain that public utility which alone justified the powers being intrusted to them. The imprudence of speculators is to be restrained, and unprofitable adventures discountenanced, or directed into channels of usefulness and profit. In short, parliament must be the umpire between all parties, and endeavour to reconcile all interests.

The inquiries that are necessary to be conducted in order to determine upon the merits of private bills are too extensive for the house to undertake, and it has therefore been usual to delegate them to committees. To prevent parties from being taken by surprise, the standing orders require certain notices to be given (to the public by advertisement, and to parties interested by personal service) of the intention to petition parliament. The first thing which is done by the commons *on receiving the petition* therefore *is to inquire whether these notices have been properly given, and if all other*

forms prescribed by the standing orders have been observed. This inquiry is confided to a committee, who report their determination to the house. It will be necessary here to explain the constitution of this committee. Until very recently it was the practice for the Speaker to prepare “lists” of members who were to form committees on bills relating to particular counties, in such a manner as to combine a fair proportion of members connected with the locality, with the representatives of places removed from any local influence or prejudice. Each of these lists consisted of upwards of a hundred members, any five of whom formed the committee. This system was liable to many objections. The number of the committee was too great to allow any responsibility to attach to the members. They were canvassed to vote by each of the opposing parties without having heard the evidence or arguments on either side; and were sometimes induced to crowd into the committee-room and reverse decisions which had been arrived at after long and patient inquiry. These evils led to an entire alteration of the system. All petitions for private bills are now referred to the same select committee which is appointed at the beginning of each session, and is composed of members whose habits of business and practical acquaintance with this branch of legislation constitute them a tribunal in every respect superior to the old list committees. To facilitate these proceedings they divide themselves into four or six sub-committees.

The report which this committee makes to the house is simply whether the standing orders have been complied with or not. If it be favourable, leave is at once given to bring in the bill; if not, it is referred to another committee also appointed at the beginning of the session, and called the “committee on standing orders,” whose province it is to inquire into the circumstances of the case, and report their opinion as to the propriety of dispensing with the standing orders, of requiring notices, or imposing new conditions. If this committee decide that the parties are not entitled to indulgence, it is still competent for the house to relax

ding orders, as it does not, by any delegate its authority; yet in practice report is final. Attempts are now made to overrule it, but very with success.

As nothing has occurred to obstruct course of the bill, it is read a first time which three clear days must before the second reading, the bill printed and delivered to members. Interval. The principle is now voted by the house, as in the case of bills; and if the question for the bill be carried, it is then sent to a select committee. The action of committees on petitions nearly been explained. While the committee were reported in, both the bill and the bill itself were referred to same committee, but at present a mode of appointing committees is in use. It has been tried for a short time, and must be tested by further use before any decided opinion given upon its merits. The lists, already been described are reduced in number, and a committee selection is appointed, to whom upon the list must signify their assent since throughout the whole things before they are permitted to.

To these the committee of select a certain number of other members locally interested, in such a proportion as they may think fit. Since committees upon railway bills consist of five members only have been constituted by the committee of six.

committee, the bill, if opposed, undergoes a severe examination. Petitions are presented to the house and sent to the committee, who hear counsel examine witnesses. The principle of the bill has been by no means tested by the second reading, for the bill is discussed in the committee; it is determined by them that it has been proved, there is an end of the bill. The report is ordered to lie upon the table, and generally no further notice is of it. The house indeed seems to delegate its authority more entirely to committee on a bill than to any other stage, as it allows them to decide

against a principle in favour of which it has already declared an opinion; however it has sometimes interfered in a manner which will be best explained by briefly detailing the cases. In 1836 the committee on the Durham (South-West) Railway Bill reported, according to the usual form, that the preamble had not been proved to their satisfaction; upon which they were ordered to re-assemble for the purpose of reporting specially the preamble, and the evidence and reasons in detail on which they had come to their resolution. The detailed report was accordingly made, but the decision of the committee was not further questioned. In 1837 the bills for making four distinct lines of railway to Brighton had been referred to one committee. An unprecedented contest arose among the promoters of the competing lines; and at length it was apprehended that all the bills would be lost by the combination of three of the parties against each of the lines on which the committee would have to determine separately. This consequence was prevented by an instruction to the committee to "make a special report of the engineering particulars of each of the lines, to enable the house to determine which to send back for the purpose of having the landowners heard and the clauses settled."

If the committee allow that the allegations of the preamble have been proved, they proceed to consider the bill clause by clause. But before we quit the subject of the preamble, the modern practice concerning railway bills may be adverted to. There are so many grounds upon which the preamble may fail to be proved, and so many points on which the committee should be informed before a just decision can be given, that in 1836 a rule was established which obliges the committee to report in detail. On receiving the report, the house is now acquainted with the chief particulars from which the expediency of the measure may be collected. The length of the line,—the probable expense of the works, and the sufficiency of the estimates,—the revenue expected from passengers and from agricultural produce, or otherwise, with the grounds of the objection,

—the engineering difficulties,—the gradients and curves, are all distinctly stated. This system might be extended, with great advantage, to other classes of bills; but is confined at present to railway bills alone. Much attention has been paid of late to the improvement of the modes of conducting private business, and it is not improbable that detailed reports may form part of the future recommendations of committees, on whom the task of suggesting further improvements may be imposed.

It has been said that public bills are occasionally referred to select committees; these however must also pass through a committee of the whole house. Private bills are committed to select committees only. Bills for divorcees, by a standing order, were committed, like public bills, to committees of the whole house, until the 11th February, 1840, when an order was made for referring them to a select committee of nine members.

It will not be necessary to pursue any further the progress of private bills, which differs only from that already described in respect of bills of a public nature, in the necessity for certain specified intervals between each stage, and for notices in the private bill office.

In the House of Lords, when a private bill is unopposed, it is committed to the permanent chairman of committees, and any other peers may attend; but when a bill is to be opposed, the committee on standing orders inquires whether the standing orders have been complied with, and if so, the bill is referred to a committee of five appointed by a standing committee of five peers, to whom is confided the duty of selecting all committees on opposed bills, according to the circumstances of each case.

In order to ensure a proper acquaintance with the provisions of private bills, some of which are very voluminous, the House of Commons have lately adopted a rule requiring breviatees of the bills to be laid before them six days before the second reading, and breviatees of the amendments made by the committee, before the house take the report into consideration. These are prepared by the ex-

aminer of election recognizances and counsel to the speaker.

Conferences between the two Houses.—The progress of bills in each House of Parliament having been detailed, it still remains to describe the subsequent proceedings in case of difference between them. When a bill has been returned by either house to the other, with amendments which are disagreed to, a conference is desired by the house which disagrees to the amendment, to acquaint the other with the reasons for such disagreement; in order, to use the words of Hatsell, "that after considering those reasons, the house may be induced, either not to insist upon their amendments, or may, in their turn, assign such arguments for having made them, as may prevail upon the other house to agree to them. If the house which amend the bill are not satisfied and convinced by the reasons urged for disagreeing to the amendments, but persevere in insisting upon their amendments, the form is to desire another conference; at which, in their turn, they state their arguments in favour of the amendments, and the reasons why they cannot depart from them; and if after such second conference the other house resolve to insist upon disagreeing to the amendments, they ought then to demand a 'free conference,' at which the arguments on both sides may be more amply and freely discussed. If this measure should prove ineffectual, and if, after several free conferences, neither house can be induced to depart from the point they originally insisted upon, nothing further can be done, and the bill must be lost." An interesting occasion on which all these proceedings were successively adopted has recently occurred. A free conference had not been held since 1702, until a contest arose in 1836 upon amendments made by the lords to a bill for amending the Act for regulating Municipal Corporations.

Whether the conference be desired by the lords or by the commons, the lords have the sole right of appointing the time and place of meeting. The house that seeks the conference must clearly express in their message the subject upon which it is desired, and it is not granted as a

matter of course. There are many instances to be found in the Journals in which a conference has been refused, but not of late years. The reasons that are to be offered to the other house are prepared by a committee appointed for that purpose, who report them for the approval of the house. These reasons are generally very short, but in some cases arguments have been entered into at considerable length. The conference is conducted by "Managers" for both houses, who, on the part of the house desiring the conference, are the members of the committee who have drawn up the reasons, to whom others are occasionally added. Their duty is to read and deliver in the reasons with which they are intrusted to the managers of the other house, who report them to the house which they represent. At a free conference the managers on either side have more discretion vested in them, and may urge whatever arguments they think fit. A debate arose in the last free conference, to which we have just alluded, and the speeches of the managers were taken in short-hand and printed. While the conference is being held, the business of both houses is suspended until the return of the managers.

Amendments made to bills by either house are not the only occasions upon which conferences are demanded. Resolutions of importance, in which the concurrence of the other house is desired, are communicated in this manner. Reports of committees have also been communicated by means of a conference. In 1829 a conference was demanded by the commons to request an explanation of the circumstances under which a bill that had been amended by the lords had received the royal assent without being returned to the commons for their concurrence. The lords expressed their regret at the mistake, and stated that they had themselves been prepared to desire a conference upon the subject, when they received the message from the commons.

Conferences were formerly held in the Painted Chamber, but since the destruction of the houses of parliament by fire in 1834, that apartment has been appropriated to the sittings of the House of Peers,

and conferences now meet in one of the lords' committee rooms.

Royal Assent to Bills.—The form of giving the royal assent to bills has already been described. [ASSENT, ROYAL.]

Committees.—Committees are either "of the whole house" or "select." The former are in fact the house itself, with a chairman instead of the lord chancellor or speaker presiding. There is a more free and unlimited power of debate when the house is in committee, as members may speak any number of times upon the same question, from which they are restrained on other occasions. Select committees are specially appointed, generally for inquiring into particular subjects connected with legislation. It is usual to give them the "power to send for persons, papers, and records;" but in case of any disobedience to their orders, they have no direct means of enforcing compliance, but must report the circumstances to the house, which will immediately interfere.

In case of an equality of voices, the chairman, who is chosen by the committee out of its own members, gives the casting vote. Some misconception appears to have existed as to the precise nature of the chairman's right of voting. In 1856 the House of Commons was informed that the chairman of a select committee had first claimed the privilege to vote as a member of the committee, and afterwards, when the voices were equal, of giving a casting vote as chairman, and that such practice had of late years prevailed in some select committees; when it was declared by the house that, according to the established rules of parliament, the chairman of a select committee can only vote when there is an equality of voices. (91 *Commons' Journals*, p. 214.) This error was very probably occasioned by the practice of election committees, which was however confined to them, and only existed under the provisions of acts of parliament.

In 1837 some regulations were made by the House of Commons for rendering select committees more efficient and responsible. The number of members on a committee was limited to fifteen. Lists of their names are to be affixed in some conspicuous place in the committee-

clerk's office and the lobby. Members moving for the committee are to ascertain whether the gentlemen they propose to name will attend. To every question asked of a witness, the name of the member who asks it is prefixed in the minutes of evidence laid before the house; and the names of the members present at each sitting, and, in the event of any division, the question proposed, the name of the proposer, and the votes of each member, are entered on the minutes and reported to the house.

Trial of Election Petitions.—The mode of proceeding in contested elections is explained in the article *ELECTIONS CONTESTED*.

Impeachment.—Impeachment by the commons is a proceeding of great importance, involving the exercise of the highest judicial powers by parliament, and though in modern times it has rarely been resorted to, in former periods of our history it was of frequent occurrence. The earliest instance of impeachment by the commons at the bar of the house of lords was in the reign of Edward III. (1376). Before that time the lords appear to have tried both peers and commoners for great public offences, but not upon complaints addressed to them by the commons. During the next four reigns, cases of regular impeachment were frequent, but no instances occurred in the reigns of Edward IV., Henry VII., Henry VIII., Edward VI., Queen Mary, or Queen Elizabeth. The institution "had fallen into disuse," says Mr. Hallam, "partly from the loss of that control which the commons had obtained under Richard II. and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of parliament against an obnoxious subject." Prosecutions also in the Star-chamber during that time were perpetually resorted to by the crown for the punishment of state offenders. In the reign of James I. the practice of impeachment was revived, and was used with great energy by the commons, both as an instrument of popular power and for the furtherance of public justice. Between the year 1620, when Sir Giles

Montessor and Lord Bacon were impeached, and the Revolution in 1688, there are about 40 cases of impeachment. In the reigns of William III., Anne, and George I. there were 13, and in George II. only one (that of Lord Lovat, in 1745, for high treason). The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville, in 1805.

An outline of the forms observed in the conduct of impeachments may be briefly given. A member of the house of commons charges the accused of certain high crimes and misdemeanors, and moves that he be impeached. If the house agree to it, the member is ordered to go to the lords, and at their bar, in the name of the house of commons and of all the commons of the United Kingdom, to impeach the accused. A committee is then ordered to draw up articles of impeachment, which are reported to the house, and having been discussed and agreed upon, are engrossed and delivered to the lords. Further articles may be delivered from time to time. In the case of Warren Hastings the articles had been prepared before his impeachment at the bar of the house of lords. The accused sends answers to each article, which are communicated to the commons by the lords; to these, replications are returned if necessary. After these preliminaries, the lords appoint a day for the trial. The commons desire the lords to summon the witnesses required to prove their charges and appoint managers to conduct the proceedings. Westminster Hall has been usually fitted up as the court, which is presided over by the lord high steward. The commons attend with the managers as a committee of the whole house. The accused remains in the custody of the usher of the black rod, to whom he is delivered, if a commoner, by the serjeant-at-arms attending the house of commons. The managers should confine themselves to charges contained in the articles of impeachment. Mr. Warren Hastings complained of matters having been introduced which had not been originally laid to his charge, and the house resolved that certain words ought not to have been spoken by Mr. Burke. Persons impeached of

high treason are entitled, by statute 20 Geo. II. c. 28, to make their full defence by counsel, a privilege which is not denied to persons charged with high crimes and misdemeanours.

When the managers have made their charges and adduced evidence in support of them, the accused answers them, and the managers have a right to reply. The lords then proceed to judgment in this manner:—The lord high steward puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crime charged therein. The peers in succession rise in their places when the question is put, and standing uncovered, and laying their right hands upon their breasts, answer "guilty," or "not guilty," as the case may be, "upon my honour." Each article is proceeded with separately in the same manner, the lord high steward giving his own opinion the last. The answers are then cast up, and being ascertained, are declared by the lord high steward to the lords, and the accused is acquitted with the result.

Walter's Fourth Institute, cap. 1; *The Sovereign Power of Parliaments*, by W. Prynne, 1643; *Parliamentary Writs*, by W. Prynne, in four parts, 1699-1804; *Privileges of the Barons of England when they sit in Parliament*, by John Selous, 1800, 1842; *Antiquæ Institutiones Parliamentarum*, by W. Hakewell, 1660; *Lex Parliamentaria*, by G. P. Esq., 12mo, 1690; *Constitution of Parliaments in England, deduced from the time of King Edward the Second*, by Sir John Potes, 1850; *Original Jurisdiction, Powers, and Jurisdiction of Parliaments*, by Sir M. Hale, 1707; republished by Hargrave, with preface, 1776; *Antient Right of the Commons of England*, by William Prynne, 1680; *Parliamentary and Political Tracts*, written by Sir Robert Atkins, 2nd edit., 1741; *History of the High Court of Parliament*, by T. Gordon, 1781; *Manner of holding Parliaments in England*, by Henry Elwyn, Cler. Parl., 1762; *Five Parliaments*, by Roger Ascham, 1791; *Blackstone's Comm.*, book 1st; *D'Ewes's Journals*; *Lords' Journals*; *Commons' Journals*; *General Indexes and Calendars to Lords' Journals*, 1509-

1810; *General Indexes to Commons' Journals*, 1547-1837; *Trial of Henry Lord Viscount Melville*, published by order of the House of Lords, 8d., 1806; *State Trials*; *Parliamentary History*; *Wynn's Argument upon the Jurisdiction of the Commons to counsel*, 1810; *Hatwell's Precedents*, new edit., 1818; *A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament*, by Thomas Erskine May, Esq., Barrister at Law, Assistant Librarian of the House of Commons. May 2nd, 1844.)

PARLIAMENT OF IRELAND.

In Ireland, as in England, from the conquest of the country by Henry II. in the latter part of the twelfth century, meetings of the barons were occasionally summoned to consult on public affairs, to which the old historians sometimes give the name of parliaments. But parliaments, in the modern sense, cannot be traced back in Ireland farther than to the latter end of the thirteenth century, or to a date about thirty years subsequent to that of the earliest parliament which is ascertained to have consisted both of lords and commons in England. Edmund de Montfort's parliament, the first for which writs are extant summoning representatives of the counties and boroughs, met at Westminster in 1265, and the first Irish parliament to which, as far as is known, the sheriffs were directed to return two representatives for each county, was held in 1295. Representatives of boroughs in Ireland cannot be traced much farther back than to the middle of the fourteenth century. They first make their appearance in 1341, and in an act or ordinance of 1359 they are spoken of as forming an essential part of the parliament.

At this time however and down to a much lower date it was only the small portion of Ireland occupied by the English settlers that was represented in the legislature. Even in the reign of Edward III. only the province of Munster and a part of Leinster were considered as shireland; they were divided into twelve counties. But in the course of the fifteenth century the greater part of those districts had become independent of the English crown; and in the reign of Henry

VII. the English dominion and the parliamentary representation were alike confined to the counties composing what was called the Pale, that is, to those of Dublin, Louth, Kildare, and Meath (then comprehending both East and West Meath), with a very few seaports beyond these limits. The vigorous measures taken under Henry VIII. and succeeding kings however gradually extended the authority of the English institutions and laws. The possessors of some of the original Irish peerages, after maintaining for centuries an independence as complete as that of the native chieftains themselves, were induced to attend the house of lords, and many new peerages were conferred, some on Englishmen or persons of English descent, some on the heads of the old Irish families. The twelve ancient counties were all reclaimed in the reign of Henry VIII., and others were added by Mary, Elizabeth, and James, till, in the time of the last-mentioned king, the whole island was divided into thirty-two counties, as at present, each returning two representatives. Of these thirty-two counties however it is said there were seventeen in which there was not a single parliamentary borough, while in the remaining fifteen there were only about thirty. But either this account must be wrong or the common statement that James added only forty new boroughs must be an under statement, if, as appears, the entire number of the Irish commons in 1613 was 232. In this number however would be included the two representatives of Trinity College, Dublin. Subsequent new charters to boroughs augmented the house by the year 1692 to 300, at which number it remained stationary. In 1634 the number of peers was 122, and more than 500 Irish peerages were created between that date and the Union. Some however also became extinct.

It was only for a very short period of its existence that the Irish parliament was held to be a supreme legislature. Ireland being regarded as a conquered dependency, it was maintained that its parliament was in all respects subordinate to that of England, and subsequently to that of Great Britain, which might make laws

to bind the people of the one country as well as of the other. The received legal doctrine used to be, that King John, in the twelfth year of his reign (A.D. 1210), ordained by letters-patent, in right of the dominion of conquest, that Ireland should be governed by the laws of England; in consequence of which both the common law of England and all English statutes enacted prior to that date were held to be of the same authority in Ireland as in England. With regard to English acts passed subsequently to that date, it was also held, in the first place, that Ireland was bound by all of them in which it was either specially named or included under general words. But further, inasmuch as one of the Irish acts called Poyning's Laws, passed in the tenth year of Henry VII. (A.D. 1495), in the lord-lieutenancy of Sir Edward Poyning, or Poynings, declared that all statutes "lately" made in England should be deemed also good and effectual in Ireland, it was held that this established the authority in Ireland of all preceding English statutes whatsoever; making those enacted since the 12th of John of the same force with those enacted before that date. This however was admitted to be the last general imposition of the laws of England upon Ireland. Of the English statutes passed since the 10th of Henry VII., it was allowed that those only were binding upon Ireland in which that country was specially named or included under general words.

The above-mentioned was only one of Poyning's laws. The substance of some others is given by Blackstone (1 *Com.*, 102); which prevented any laws from being proposed, except only such as were drawn up before the parliament which should pass them was in being; but by the 3 & 4 Philip and Mary, c. 4, it was provided that any new propositions might be certified to England for approval, even after the summons and during the session of parliament. Still this left to the parliament of Ireland nothing more than merely the power of rejecting any law proposed to it; it could neither initiate a new law nor repeal an old one, nor even amend or alter that which was offered for its acceptance. In practice however,

the letter of the statute was somewhat relaxed. Blackstone goes on to state that the practice in his day (some years after the middle of the last century) was, "that bills are often framed in either house, under the denomination of 'heads for a bill or bills,' and in that shape they are offered to the consideration of the lord-lieutenant and privy council, who, upon such parliamentary intimation, or otherwise upon the application of private persons, receive and transmit such heads, or reject them without any transmission to England." These heads of bills however really differed in nothing from bills or acts of parliament, except that, instead of the words "Be it enacted," the formal commencement of each paragraph or clause was, "We pray that it may be enacted;" and the motion for presenting them scarcely differed, except in form, from the motion in the English House of Commons for leave to bring in a bill, a motion necessary in all cases to be assented to or carried in the affirmative before the actual bringing in of any bill. And as for the consent of the crown or the government, which it was necessary to obtain before either house of the Irish parliament could take up the consideration of any proposed law, with a view to its enactment, that law in practice probably be found to operate much in the same way with the assent of the crown, which even in England was necessary to give validity to any bill after it had passed both houses. In the Irish as well as in the English parliament there was in fact an opportunity of discussing the proposition without the permission of the crown. An English as well as an Irish bill required the assent of the crown before it could become law. The practice of presenting heads of bills however was not introduced into the Irish parliament till after the Revolution of 1688.

But the dependence of Ireland upon the English crown, and the consequent subordination of the Irish legislature, were held to go still farther than to the establishment of the principle that laws might be made by the parliament of England to bind Ireland. The Irish House of Lords had entertained writs of error upon judgments in the courts of common

law from the reign of Charles I., and appeals in equity from the Restoration. Nevertheless, in the year 1719, a judgment in the Court of Exchequer having been reversed by the House of Lords, the question was carried to the House of Lords of Great Britain, by which the judgment of the Court of Exchequer was affirmed.

On this the Irish House of Lords resolved that no appeal lay from the Court of Exchequer in Ireland to the parliament of Great Britain. But this resolution was immediately met by an act of the British parliament, the 5 Geo. I. c. 1, declaring that "the king's majesty, by and with the advice and consent of the lords spiritual and temporal of Great Britain in parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the people and the kingdom of Ireland; and that the House of Lords in Ireland have not nor of right ought to have any jurisdiction to judge of, reverse, or affirm any judgment, sentence, or decree given or made in any court within the said kingdom; and that all proceedings before the said House of Lords upon any such judgment, sentence, or decree are and are hereby declared to be utterly null and void to all intents and purposes whatsoever."

In this state the law remained till the year 1782. In that year the statute 5 Geo. I. c. 1, was repealed by the 23 Geo. III. c. 53; and the following year the 23 Geo. III. c. 28, declared the exclusive authority of the Irish parliament and courts of justice in all matters of legislation and judicature for Ireland. Finally, in 1800, by the Act of Union, the 29 & 40 Geo. III. c. 67, the Irish parliament was extinguished, and it was enacted that the United Kingdom should be represented in one and the same parliament, to be called the parliament of the United Kingdom of Great Britain and Ireland. [PARLIAMENT.]

The earliest Irish statutes on record are of the year 1310; but from that date there are none till the year 1423, from which time there is a regular series. The whole have been printed, and there are

also abridgments by Bullingbroke and Belcher, Hunt, and others.

(Lord Mountmorres's *History of the Irish Parliament*; Blackstone's *Commentaries*; Oldfield's *Representative History of Great Britain and Ireland*; Wakefield's *Account of Ireland, Statistical and Political*; Hallam's *Constitutional History of England*.)

PAROCHIAL REGISTERS. [REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES.]

PAROL. This term, which signifies "a word," has been adopted from the Norman-French as a term of art in English law, to denote verbal or oral proceedings, as distinguished from matters which have been recorded in public tribunals or otherwise reduced to writing. Thus a parol contract is an agreement by word of mouth, as opposed to a contract by deed. Parol evidence is the testimony of witnesses given orally, as opposed to records or written instruments. This is the popular acceptance of parol, but, strictly speaking, everything, even in writing, is parol which is not under seal.

The formal allegations of the parties to a suit in the common law courts, called pleadings, which are now made in writing, were formerly conducted orally at the bar, and in the year-books are commonly denominated the parol. Hence in certain actions brought by or against an infant, either party may suggest the fact of the infancy, and pray that the proceedings may be stayed; and where such a suggestion was complied with, the technical phrase was that the "parol demurred" (*demoratus*), that is, the pleadings were suspended until the infant had attained his full age.

PARSON. [BENEFICE, p. 341.]

PARTNERSHIP. If two or more persons join together their money, goods, labour, and skill, or any or all of them, for the purpose of buying and selling, and agree that the gain or loss shall be divided among them, that is a partnership. The object of the partnership may be any thing that is lawful. Any agreement of partnership for an unlawful object is no agreement. The English law of partnership is founded on the common

law, the so-called law of merchants, and the Roman law. By the common law a partner has no power to bind his co-partner by deed. By the law of merchants he has power to bind his co-partner by a bill of exchange, and there is no survivorship in the partnership stock. From the Roman law is derived the principle that a partnership (*societas*) is terminated by the death of a partner. (Gains, iii. 155.)

No writing is necessary to constitute a partnership. The acts of the parties, when there is no partnership contract in writing, are the evidence of the contract. Partners may be either ostensible, nominal, or dormant. He whose name appears to the world as a partner is an ostensible partner. An ostensible partner may or may not have an interest in the concern; if he has no interest in the concern, but allows his name to appear as one of the firm, he is a nominal partner; if his name and transactions as a partner are purposely concealed from the world, he is a dormant partner. But if his name and transactions are actually unknown to the world, he is more properly termed a secret partner. Generally speaking, any number of persons may be partners, but there are some exceptions. [BANK; JOINT-STOCK COMPANY.]

Any person of sound mind and not under any legal disability may be a partner. An infant may enter into this, as into any other trading contract which may possibly turn out to his advantage. It may however be avoided by him on coming of age, though the person with whom he contracts will be bound. An alien friend may be a trader and sue in personal actions, and may therefore be a partner. But an Englishman domiciled in a foreign country at war with England, or an alien enemy, cannot be a partner with a person in this country; at least he cannot sue in this country for a debt due to the firm. Married women are incapacitated from entering into the contract of partnership; and although they are sometimes entitled to shares in banking-houses and other mercantile concerns, yet in these cases their husbands are entitled to such shares, and become partners. If parties share in the profit and

law, they are partners, although one may bring into the trade money, another goods, and a third labour and skill, which was also the rule of the Roman law (Gaius, iii. 149); and where one party is sole owner of goods and another sole disposer or manager of them, if they share the profits, they are partners. Every man who has a share of the profits of a trade must also bear his share of the loss; for a right to a share of the profit implies a liability to bear a share of the loss. Yet one partner may stipulate with the other partners to be free from all liability to loss, and such stipulation will hold good between himself and his partners, which was also the rule of the Roman law, though he will still be liable to all those who have dealt with the firm of which he is a member. Persons who jointly purchase goods are not partners, unless they are jointly concerned in the profit or the produce arising from the sale of them. Partnership accordingly includes the notion of joint buying and joint selling for the purpose of making profit. The division of profits between or among partners may be in any proportions that they agree upon. To constitute a man a partner on the ground of sharing profits, he must have an interest in the profits, as a principal in the firm; if he only receive a portion of the profits, by way of payment for his labour, trouble, or skill as a servant or agent of the concern, he is not a partner. Sometimes there may be a difficulty in determining whether a person is such a sharer in profits, according to the legal meaning of that term, as will make him a partner and consequently liable to bear his share of any loss.

If persons share the profits of a trade, it is presumed that they are partners, and as such, liable to all who deal with the firm, whatever be the private agreement among themselves. But they may repel the presumption of partnership by showing that the legal relation of partnership among themselves does not exist. If a person allow his name to be used in a business or in any other way consent to appear as a partner, he will be so considered with respect to other persons, whatever may be his agreement with the firm; and

he will be equally responsible to third parties with the other partners, although he may not receive or be entitled to receive any of the profits. The ground of this rule of law is clear and reasonable: a person must be considered bound by a contract, if he set in such a way as to make other contracting parties believe that he is a party to the contract; and such is the case with a man who allows his name to appear as a member of a firm, as to all contracts and dealings which are necessary for carrying on the business of the firm.

A partnership at will is one which continues as long as the parties live and are able and willing to continue it; a partnership for a fixed term continues for the term if the parties live and are of legal capacity to continue it. A partnership at will may be dissolved at any time by the expressed will of any member of it, a rule which is derived from the Roman law, and which is a necessary consequence of the nature of the partnership contract. In such case the partnership is dissolved immediately upon notice given by any of the partners. The effect of such dissolution is to stop all new partnership dealings or contracts; but the partnership still continues for the purpose of completing all contracts already made, and all dealings or undertakings already commenced. On such dissolution, any partner is entitled to have the whole partnership stock, and the interest in the premises on which the business is carried on, converted into money, and to receive his share of the produce. In all cases, by the natural death of a partner, the partnership is dissolved, a rule also derived from the Roman law, as already stated; it is also dissolved by a partner's civil death, as his outlawry, or attainder for treason or felony; and strictly speaking, the whole property is forfeited to the crown; for the king never becomes joint tenant, or tenant in common with the other partner, and he is entitled to the whole; but this right is seldom enforced against creditors or innocent partners. A marriage of a feme-sole trader is also a dissolution of a partnership at will. A partnership for a term may be dissolved before its expiration by the un-

tual consent of the parties, by the decree of a court of equity, or by the bankruptcy, outlawry, or felony of any of the partners. A court of equity will in some cases dissolve a partnership on the ground of incurable insanity in one of the partnership. A partner may agree that upon his death the business may be carried on beyond the legal period of dissolution in the hands of his children or other third parties, but this is properly an agreement for a new partnership. Partners cannot be relieved from future liabilities to third parties without notice to them and to the world in general that the partnership has ceased; but in the case of a dormant partner, if none of the creditors know that he is a partner, no notice of his retirement from the firm is necessary; and if it be known to some, notice to such only will be sufficient. On the death of a partner, notice of the dissolution to third parties is unnecessary.

Partners are joint-tenants in the stock and all effects; yet upon the decease of a partner, his personal representatives become entitled to his share of the moveable stock and effects, and they thereupon become in equity, and, as it has been said, at law, tenants in common with the surviving partners. If, as is generally the case in the purchase of lands for the purposes of a partnership, they are conveyed to the partners as tenants in common, and one of the partners should die intestate, the legal estate in his share will descend to his heir, who will be tenant in common with the other partners. If the lands were conveyed to them as joint tenants, there will be no survivorship in equity; and it becomes then a question whether, upon the death of a joint trader, who, with his partners, has so purchased lands for the purpose of the trade, his share will descend for the benefit of his heir or his next of kin; and the better opinion seems to be, although the point has never been decided, that although the legal estate in freehold property purchased by partners for the purposes of their trade will go in the ordinary course of descent, yet the equitable interest will be held to be part of the partnership stock, and distributable as personal estate. Purchased lands may be conveyed so as to be always held as

real estate, and descend to the heirs of the several partners.

Any fraud on the part of one partner, either by misapplication of the partnership fund or in any other way, is a matter of which a court of equity will take cognizance. No partner has a right to engage in any business or speculation which must necessarily deprive the partnership of his time, skill, and labour, because it is the duty of each to devote himself to the interest of the firm. It is the duty of each partner to keep precise accounts, and to have them always ready for the inspection of his co-partner. Each partner is liable to the performance of all contracts of his co-partners, in the same manner as if entered into personally by himself, provided they relate to matters which are within the objects and purposes of the partnership. If the parties to the contract of partnership do not regulate it by express stipulation, the contract will be interpreted according to the established rules of law that are applicable to it. Though partners may have entered into a written agreement which specifies the terms on which the joint concern is to be carried on, yet if the partnership business be regularly conducted in any respect contrary to those terms, it is a legal conclusion that the partners have, so far as the change extends, changed their terms of agreement. For instance, if the agreement be that no partner shall draw or accept a bill of exchange in his own name, without the concurrence of all the others, yet if they afterwards adopt a practice of permitting one of them to draw or accept bills without the concurrence of the others, it will be held that they have so far varied the terms of the original agreement.

One partner may maintain an action of covenant against his co-partner, whether the covenant be for the payment of money or the performance of any act for commencing or establishing the partnership, or for the performance of any of the articles after the partnership has commenced; and if adequate compensation for the breach cannot be had at law, a court of equity will enforce a specific performance of the covenant itself. Courts of law do not allow actions of debt by one

against another for money due on a contract, or for money held on account for the purposes of the ship. The partner who is aggrieved therefore enforces his remedy as of account, or by an application out of equity, by filing a bill for an account and a dissolution of the partnership.

A partner cannot maintain an action against his co-partner for an account performed, or money due on account of the partnership; since he has a claim upon a co-partner.

For a sum of money due on account of the partnership, but not constituting balance of a separate account, several instances of all accounts, his mode of recovering the amount is by an account, or by a bill in a court of equity praying for an account, and also for a dissolution. If it is that an undertaking is impracticable if a machine, for the working of the partnership was entered into, it answers the purposes intended, the object of the parties is frustrated if either party commit fraud or act of carelessness or waste in the execution of the partnership, the aggrieved has a right to a dissolution; the same will be decreed in such cases.

A partner is also entitled to an account of the partnership assets against a partner, but it was formerly held that a partner could not have it pending the ship. If therefore he filed his bill for an account, it was also necessary to ask for a dissolution. It is now considered that a partner may have such an account pending a proper case, without asking for a dissolution; but considering circumstances under which a partner bill for an account of partnership assets, it will seldom happen that it is his interest not to pray for a dissolution of the partnership. Where one partner has committed such breaches of duty as would warrant a decree for a dissolution, a court of equity will interfere to prevent by injunction: as where one partner has involved the partnership in a lawsuit, or has himself become insolvent, or will restrain him from drawing, or incurring bills in the name of the firm, from receiving the partner-

ship debts, and from continuing to carry on the business by entering into new contracts. It will also restrain an action brought by one partner against his co-partner on a separate and private account, upon payment by the latter of the money into court. So it will restrain the application of the partnership property to a use not warranted by the articles; or an execution against the partnership property for the separate debt of one partner. A court of equity will appoint a receiver where one partner excludes another from taking such part in the concern as he is entitled to take, and will do this even with a view to the continuation of the co-partnership, if it is for the benefit of the complaining partner, although such a step is usually taken with a view to a dissolution and winding up of the partnership affairs. Whether the party applying for a receiver with a view to a dissolution of the partnership, he must make out such a case to induce the court to interfere as would authorise a decree for a dissolution.

Generally speaking, one partner has an implied authority to bind the firm by contracts relating to the partnership, and he can do this by mere verbal or written agreements, or by negotiable securities, such as bills of exchange and promissory notes. One partner may pledge the credit of the firm to any amount; but there are some exceptions to this rule. A dormant partner is in all cases liable for the contracts of the firm during the time that he is actually a partner; and a nominal partner is in the same manner liable during the time that he holds himself out to the world as a partner. A partner will be liable in respect of a fraud committed by his co-partner, if committed in the capacity of partner, in contracts relating to the co-partnership, made with third persons. Thus if a partner purchase goods such as are used in the business, and fraudulently convert them to his own use, the innocent partner, provided there be no collusion between the seller and the buyer, is liable for the price of the articles. One partner has no implied authority to bind his co-partner by deed, yet if he execute a deed on behalf of the firm, in the presence of and with the consent of his co-partners, it will bind the

firm. It seems that a release by one of several partners to a debtor of the firm binds the firm; but if such release be fraudulent, it will be set aside by a court of equity; and even a court of law will interfere to prevent a fraudulent release from being pleaded.

Where no time is mentioned in the deed of partnership for its commencement, the liabilities of the firm will commence from the date of the deed; but in adventures, unless the parties have previously held themselves out as partners, the liabilities commence from the time fixed by the contract. An in-coming partner is not liable for debts contracted before he joined the firm, but if he pay any of the old debts or interest upon them, or do other special acts, he may render himself liable in equity. On the retirement of an ostensible partner, notice of his retirement must be given, or he will be liable to the creditors of the continuing firm for subsequent contracts made by them, and such notice is usually given in the 'Gazette,' but notice in the 'Gazette' will not bind creditors who are not shown to have seen the notice. Third persons have a claim against a dormant partner for contracts entered into by the firm while he was a partner. This claim is founded on such dormant partner being actually a partner; and therefore it is unnecessary, on the dissolution of a partnership between an ostensible and a dormant partner, to give notice of the dissolution to the creditors, in order to protect the latter from subsequent contracts: for when the dormant partner has ceased to be a partner, he is relieved from all future liability.

It is collected from the majority of cases that a partnership contract is joint (not joint and several) both at law and in equity. Upon the death of a partner, therefore, the legal remedy against him in respect to the joint contract is extinguished, and the creditor can maintain an action against the surviving partners only. But the rule of equity as applicable to partners with respect to third parties was considered to be that the joint debts should be satisfied out of the joint estate; if that were insufficient, then subject to the claims of their separate creditors out of their separate estates proportionally; and if any

of them were insolvent, then out of the remaining separate estates proportionally. But the case of *Devaynes v. Noble* (1 Mer., 529), affirmed on appeal by Lord Brougham (2 R. & M. 495), has established the principle that a partnership contract is several as well as joint; and that a partnership creditor may have recourse for full payment to the estate of a deceased partner. And the same judge (Sir W. Grant) who decided that case, declared that a partnership debt has been treated in equity as the several debt of each partner, though at law it is only the joint debt of all. By this decision it appears that a joint creditor on the death of one partner obtains a more advantageous remedy against his estate than he would have had against his separate estate if living. But it seems doubtful whether this point can be considered as finally settled.

Notice of the decease of a partner to the creditors of the firm is not necessary to free his estate from future liability; but it is otherwise if one of the surviving partners be executor of the deceased. A deceased partner sometimes directs his executors to continue the trade; in that case his estate will be liable to the extent to which he directs his assets to be employed. If the executor exceed that limit, he becomes personally responsible.

In actions by partners, all the partners may, and all ostensible partners must, join as plaintiffs, unless the contract upon which the action is brought be in writing under seal, when only those partners who are included can sue thereon. But if a contract not under seal be made by some, for the benefit of themselves and others, those for whose benefit it is made, as well as those whose names appear on the contract, may sue. Persons who may legally be partners in foreign countries, as husband and wife, cannot sue here as partners, for by the law of England husband and wife are not permitted to sue as partners. On the other hand, partners trading abroad in such a manner as to make a partnership here, may sue as partners for consignments sent to this country, though they cannot sue as partners at the place of trading by reason of the particular law of that place. The construction of contracts is governed by

the laws of the country in which they were made; but remedies must be pursued by the means pointed out by the law of the country whose tribunals are appealed to. The laws of the country where the contract was made can only have a reference to the nature of the contract, not the mode of enforcing it. If partners have occasion to prefer an indictment relating to the partnership property, such property may be stated in the indictment as belonging to one of them by name, and to another or others, as the case may be. But though it is not necessary to name all the partners, yet where there are other partners, that fact should appear in the indictment, or the prisoner must be acquitted.

A whole firm may become bankrupt, or some or one only of the partners may become so, whilst the remaining members may be solvent; but those only of the partners who have committed acts of bankruptcy are to be deemed bankrupts; and to constitute two or more bankrupts under a single fiat there must be evidence of joint trading. Upon the bankruptcy, the whole of the bankrupt's property vests absolutely in the assignees, who have the same remedy by action for the recovery of the debts due to the bankrupt, and for the redress of all civil injuries with respect to the property passing to them under the fiat, as the bankrupt would have had if no fiat had issued. Accordingly, when the bankruptcy is separate, the solvent partners join with the assignees in an action for the recovery of the joint debts. On the bankruptcy of one partner the solvent partners become tenants in common with the assignees of all the partnership effects. Upon the bankruptcy of one partner, under a separate fiat issued against him, the assignees take all his separate property and all his interest in the joint property; and if a joint fiat issue against all, the assignees take all the joint property, and all the separate property of each individual partner. Joint estate is that in which the partners are jointly interested for the purposes of the partnership at the time of the bankruptcy. Separate estate is that in which the partners are each separately interested at

that time. Joint debts are those for which an action, if brought, must be brought against all the partners constituting the firm; in all cases therefore when a partner becomes liable for a debt contracted by his copartners, a joint debt is created, and the creditor is a joint creditor of the firm. Separate debts are those for which the creditor can have his remedy at law against that partner only who contracted them. (Collyer, *On Partnership*.)

On partnerships in banks and joint stock companies, see *BANK* and *JOINT STOCK COMPANY*. As to mines, a partnership for working a mine is considered by courts of equity in England like any other trade partnership. The mode in which property in ships is held by part owners is explained in *SHIPS*.

The fundamental rules of English partnership are the same as those of the Roman contract of partnership, the chief rules of which are contained in *Gaius* iii. 148-154; *Dig.* 17, tit. 2. The great extension of English industry and commerce has been accompanied by the growth of a large mass of law applicable to the contract of partnership, a great part of which has been made by the decisions of the courts on such cases as have been litigated. Accordingly the rules about partnership now form the subject of bulky treatises, the safest clue to the use of which is a clear conception of the fundamental notions of a contract of partnership.

PARTY WALLS. [*BUILDING, ACTS FOR REGULATING.*]

PASSENGERS' ACT. [*EMIGRATION, p. 231.*]

PASSPORT, a printed permission signed by the secretary of state of the home department of a country, which allows a subject of that country to leave it and go abroad. When he has obtained this, the bearer must have his passport signed by the minister or agent of the state to which he intends to proceed. A foreigner who wishes to leave a country where he has been residing, generally obtains his passport from the minister or agent or consul of his own state. Such a document states the name, surname, age, and profession of the bearer.

describes his person, and serves as a voucher of his character and nation, and entitles him to the protection of the authorities of other countries through which he may pass, and which are at peace with his own. On arriving at the outposts or frontier towns of a foreign state, every traveller is obliged to show his passport, which is examined by the proper authorities before he is allowed to proceed on his journey. This ceremony is sometimes repeated at every garrison town which he passes on the road. Even the natives of most European states cannot travel twenty miles through their own country without being furnished with a passport.

The system of passports is old, but it has become much more rigid and vexatious during the last half-century. Passports are not required in the British Islands and the United States of North America; and the natives of those two countries, accustomed to the freedom of unobstructed movement, find the regulations as to passports when they travel on the continent of Europe to be rather irksome. The practice has been defended on the plea that it prevents improper and dangerous persons from introducing or concealing themselves; but numerous instances have proved that persons, however obnoxious, who have money and friends, can evade such restrictions. That every state may admit or refuse admittance to foreigners as it thinks fit, cannot be questioned; and in times of war especially, some sort of restriction may be required for the safety of the country; but the present vexatious system of passports, as enforced in many European states in time of profound peace, is useless and mischievous. It is a check upon travellers, to whom it causes much trouble and loss of time, while the advantages supposed to result from it are at least very dubious.

It is not easy to enforce the regulations respecting passports where railroads have become almost the only mode of travelling; and in Belgium an alteration has recently been made in the passport system in consequence of the difficulty of rigidly adhering to the old regulations.

PASTURE. [COMMON, RIGHTS OF; INCLOSURE.]

PATENT. This term is applied to certain privileges which are granted by the Crown by letters patent. [LETTERS PATENT.] The object of such privileges is to encourage useful inventions. Before applying for a patent for an invention, two considerations are necessary: first, what is entitled to a patent; and next, whether the invention has the requisite conditions.

In the first place, the machine, operation, or substance produced, for which a patent is solicited, must be new to public use, either the original invention of the patentee, or imported by him and first made public here. A patent may be obtained for England, Ireland, or Scotland, although the subject of it may have been publicly known and in use in either or in both of the other two countries.

In the second place, the subject of the invention must be useful to the public, something applicable to the production of a vendible article, for this is the construction put upon the words "new manufacture" in the statute of James I. The discovery of a philosophical principle is not entitled to such protection: such principle must be applied, and the manner of such application is a fit subject for a patent.

Inventions entitled to patent may be briefly enumerated as follows:—

1. "A new combination of mechanical parts, whereby a new machine is produced, although each of the parts separately be old and well known."

2. "An improvement on any machine, whereby such machine is rendered capable of performing better or more beneficially."

3. "When the vendible substance is the thing produced either by chemical or other processes, such as medicines or fabrics."

4. "Where an old substance is improved by some new working, the means of producing the improvement is in most cases patentable."

If the inventor think that the machine, operation, or substance produced comes under any of these enumerations, and that it is new, and likely to be useful to

the public, he may enter a caveat at the Patent Office, and at the offices of the attorney-general and the solicitor-general, in the following form:—

"Caveat against granting letters patent to any person or persons for (here describe the invention in the most general terms), without giving notice to A. B., of _____, in the county of _____."

(Date.)

These caveats stand good for twelve months, and may be renewed from year to year: the fee for entering such caveat is £s. at each office.

As soon as the caveat is entered, the inventor may find it necessary to obtain the assistance of workmen or others, in order to carry his invention into effect; and if in doing this he should make known to them his invention, he will not thereby lose his right to a patent. Any communication which is necessary for carrying his ideas into effect is not considered such a publication as would of course vitiate his right. But though the inventor is thus protected in his experiments, and is safe while dealing with honest people, he is not protected against fraud. If a person in the secret should make such invention public, or cause it to be used by several persons between the time of entering the caveat and the next stage of proceeding, that of sending in the petition, no patent could be obtained, as the declaration that accompanys the petition could not be made, or, if made, would be untrue. Again, if such workman, instead of making it public, were to give to some other person the necessary information, the latter might apply for a patent for such invention as his own; and if he could succeed in misrepresenting the source of his information by a false declaration, he might force the real inventor to allow him to participate in such patent, or to forego it altogether. The caveat can do no more than prevent any one from stealing the ideas of an inventor and appropriating them to his own use, to the exclusion of the inventor; and it will also ensure notice of any application for a patent for a similar invention, and in some cases prevent the expenditure of time and money upon a subject for which no patent could be

obtained. If any one apply for a patent, the title of which is similar to that contained in the caveat, the attorney or solicitor-general will send a notice of such application to the enterer of the caveat, who, if he should think such application likely to interfere with his invention, must, within seven days from the receipt of the notice, state in answer his intention of opposing such patent.

The attorney or solicitor-general then summons the applicants to appear separately before him; and if he should be of opinion that the two patents will interfere with each other, or are virtually the same, the usual course is not to grant any patent except to the two claimants conjointly, though if priority of invention can be proved by either, he who is prior is entitled to the patent.

If the invention is of such a nature that it can at once be produced or put into operation, no caveat is needed; and indeed a caveat may be the means of exciting the very attention and opposition which it is intended to prevent. Where some experiments or operations which require assistance must be performed before a definite title can be given to the invention, as must be done in the declaration and petition, it is much better to avoid the caveat; and by getting the different parts of the machinery or operations performed by different persons, if possible, keep the invention a secret until the patent is secured.

The next step is to draw up a petition to the crown, before doing which however the title of the patent must be settled. To those who have not considered the subject this may not seem a very difficult matter, but in fact it requires the greatest care; for the least discrepancy between the title and the description contained in the specification will endanger the patent. (See the evidence of Mr. Farre and others before a committee of the House of Commons upon this subject, 1829.)

The title should set forth the subject of the patent in such terms that any one may see if a patent has been taken out or applied for in the case of any similar invention.

The titles of patents collectively should form an index of the inventions thus pro-

ected. It is a common practice however to make the title as obscure as it can be made without endangering the patent, in order that the real object of it may be kept secret. But this is a matter of great difficulty, and has often justly vitiated a patent. The law requires all patented inventions to be open to public inspection, and the enterer of a caveat may be cheated by a title, for although the subjects may be the same, a title may express the invention so faintly, or indeed so falsely, that the similarity of two inventions may escape the notice of the attorney-general, and injustice may be done by granting a patent to one party while priority of invention belongs to another. By the 5 & 6 Wm. IV. c. 83, a patentee is allowed to enter a disclaimer of any part of the title or specification, with the consent of the attorney-general or solicitor-general, who may order such disclaimer to publish his disclaimer. This act supplies a remedy for unintentional errors, but is ineffectual where the title is purposely made obscure. Besides this, the disclaimer does not operate retrospectively, so that if an action be commenced before the entry of the disclaimer, the title and specification must be adduced on the trial as they originally stood. A caveat may be entered against the granting of such disclaimer.

The following cases contain instances of patents being lost through defective titles:—King v. Metcalfe (2 Starkie, N. P. C., 249); Cochrane v. Smethurst (K. B., 1 Starkie, 205). In the case of Bloxam v. Elsee (6 Barn. and Cress., 169 and 178), the title of a patent which came in question was "A Machine for making Paper in Single Sheets, without seam or joining, from 1 to 12 feet and upwards in width, and from 1 to 45 feet and upwards in length." The specification however described a machine only capable of producing paper of one width or to a certain width. Now if an inventor who thought of taking a patent for a machine to make paper of a greater width than 12 feet had looked at the title only of this patent, he would have supposed that such a patent already existed; but if he had inspected the specification, he would have found that it did not bear

out the title, as the machine therein described was not capable of making paper of a width greater than 12 feet. The patent then was invalid, as the title comprised more than the specification. This is the most common error that patentees fall into. Jessop's case, cited during the trial of Boulton and Watt against Bell, in 1795, by Mr. Justice Buller, is another instance. A patent was taken out for a "New Watch," whereas the specification only described a particular movement in a watch, which was the real invention, and the patent was therefore void.

An honest and valid title may be stated, in a few words, to be, a description of the precise object of the invention in the most simple language.

The title being settled, the petition must be drawn in the following form:—

"The humble petition of A. B., of _____, in the county of _____,

Sheweth,

"That your petitioner hath invented (here insert the title which you intend the patent to bear), that he is the first and true inventor thereof, and that it has not been practised by any other person or persons whomsoever, to his knowledge and belief.

"Your petitioner therefore most humbly prays that your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, your royal letters patent under the great seal of Great Britain for the sole use, benefit, and advantage of his said invention within England and Wales and the town of Berwick-upon-Tweed, and also in all your Majesty's colonies and plantations abroad, for the term of 14 years, pursuant to the statute in that case made and provided."

The passage in *Italics* must be omitted if the inventor does not intend to obtain a patent for the colonies. This petition, with a declaration annexed, must be left at the office of her Majesty's secretary of state for the home department. The declaration is in lieu of the affidavit which was required until the passing of the Act 5 & 6 Wm. IV. c. 62.

A few days after the delivery of the petition, the answer may be received; which contains a reference to the manner

or solicitor general to report if the invention is deserving of letters-patent. If such report be favourable, it must be taken and left at the Home-office for the queen's warrant, which is addressed to the attorney or solicitor general, and directs the bill to be prepared. The bill is in effect the draft of the patent, and contains the grant with reference to the clauses and provisions in the letters patent. It is signed by the secretary of state for the home department, and by the attorney or solicitor general. If at this stage of the proceeding any person should wish to oppose the patent, a caveat may be entered in the manner already described, but the enterer is required to deposit 30*l.* at the office of the attorney or solicitor general to cover the patentee's expenses if he should succeed in establishing his right to patent. The bill, when prepared, must be left at the office of the secretary of state for the home department for the queen's sign manual. It must then be passed at the signet-office, where letters of warrant to the lord keeper of the privy seal will be made out by one of the clerks of the signet; and lastly, the clerk of the privy seal will make out other letters of warrant to the lord chancellor, in whose office the patent will be prepared, sealed with the great seal, and delivered to the patentee. Considering the number of offices through which a patent passes, it might be supposed that the inquiry into the validity of the claim is very rigid, and that, when once the patent is sealed, it is safe from opposition. But in reality the law officers through whose offices it is carried exercise no opinion upon the validity of the patentee's claim; the whole responsibility rests upon himself, as will be seen by perusing the following abstract of the form of letters patent:—

The first part of the patent recites the petition and declaration, and sets forth the title which has been given to the invention by the inventor.

The 2nd relates to the granting the sole use of the invention to the inventor for the space of fourteen years, whereby all all other persons are restrained from using the invention without a license in writing first had and obtained from the patentee, and persons are restricted from counter-

feiting or imitating the invention, or making any addition thereto or subtraction therefrom, with intent to make themselves appear the inventors thereof. This clause also directs all justices of the peace and other officers not to interfere with the inventor in the performance of his invention.

The 3rd part declares that the patent shall be void, if contrary to law or prejudicial and inconvenient to the public in general, or not the invention of the patentee, or not first introduced by him into this country.

The 4th declares that letters patent shall not give privilege to the patentee to use an invention for which patent has been obtained by another.

The 5th relates to the manner in which letters patent become void, if divided into more than a certain number of shares. The number of such shares used to be five, but all patents sealed since May, 1832, allow the interest to be divided between twelve persons or their representatives. This part also relates to the granting of licences.

The 6th contains a proviso that a full and accurate description or specification shall be enrolled by the patentee in a specified time.

The 7th directs the patent to be construed in the most favourable manner for the inventor, and provides against inadvertency on the part of the clerk of the crown in enrolling the privy seal bill.

Letters patent then only grant the sole use of an invention for a certain time, provided that the statement in the declaration be true, that the title give a distinct idea of the invention, and that the specification be enrolled within a certain time mentioned in the patent, generally two months for England, four for England and Scotland, and six for the three countries together. This time depends on the attorney or solicitor general, a longer or shorter period being granted according to the extent or difficulty of the invention; in some instances two years have been allowed for specifying.

The object of the specification is twofold:—

First, it must show exactly in what the invention consists for which a patent has

been granted, and it must give a detailed account of the manner of effecting the object set forth in the title. It must describe exactly what is new and what is old, and must claim exclusive right to the former: the introduction of any part that is old, or the omission of any part that is new, equally vitiates the patent.

In the second place, a patent is granted for a certain number of years on the condition that such full and accurate information shall be given in the specification as will enable any workman or other qualified person to make or produce the object of the patent at the expiration of that term without any further instructions. A specification is bad if it does not describe the means of doing all that the title sets forth: it is equally bad if it describes the means of effecting some object not stated in the title: it is incomplete if it mentions the use of one substance or process only, and it can be proved that the inventor made use of another, or that another known substance or process will answer the purpose as well; and it is false if more than one substance or process is described as producing a certain effect, and it is found that any one of them is unfit to the purpose. Patentees frequently render their patents invalid by claiming too much; thus, after describing one substance or process which will answer a certain purpose, they often conclude by some such expression as "or any other fit and proper means." The following is an instance in which a patent was set aside by such an expression. In specifying a machine for drying paper by passing it against heated rollers by means of an endless fabric, the inventor, after describing one sort of fabric, the only one in fact which he used, went on to say that any other fit and proper material might be used. Now if he used any other means of effecting his object, such means should have been distinctly described. This alone rendered his specification incomplete; but, besides this, it was proved that no other fabric would answer the purpose, or rather, that no other was known, and the patent was annulled accordingly. The cases which have been already mentioned as instances of bad titles will, by supposing the title to be good, be con-

verted into instances of bad specifications, as the invalidity arises from the title and specification not agreeing with each other.

The patentee may describe his invention just as he pleases, and he may illustrate such description by drawings or not; but he should be careful to use words in their most common acceptation, or if some technical use should have perverted their meaning, he should make it appear distinctly that he intends them to be taken in such perverted sense. Subjoined is the form of the other part of the specification:—

"To all to whom these presents shall come greeting, I the said (patentee's name and residence) send greeting. Whereas her most excellent Majesty Queen Victoria, by her letters patent under the great seal of Great Britain, bearing date at Westminster, the day of in the year of her reign, did give and grant unto me, the said A. B., my executors, administrators, and assigns, her special licence, full power, sole privilege, and authority, that I the said A. B., my executors, administrators, and assigns, and such others as I the said A. B., my executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times hereafter during the term of years therein mentioned, should and lawfully might make, use, exercise, and vend within England, Wales, and the town of Berwick upon Tweed, and also in all her said Majesty's colonies and plantations abroad (if such be the case), my invention of (here insert the title set forth in the letters patent verbatim); in such letters patent there is contained a proviso that I the said A. B. shall cause a particular description of the nature of my said invention, and in what manner the same is to be performed, by an instrument in writing under my hand and seal, to be enrolled in her said Majesty's High Court of Chancery within calendar months next, immediately after the date of the said in part recited letters patent, reference being thereunto had may more fully and at large appear. Now know ye, that is compliance with the said proviso, I the said A. B. do hereby declare the nature of my invention and the manner in which

the same is to be performed are particularly described and ascertained in and by the following description thereof, reference being had to the drawings hereunto annexed, and the figures and letters marked thereon, that is to say, my invention consists (here insert the description of the invention). In witness whereof I the said A. B. have hereunto set my hand and seal this day of , 1846.
(Name and seal.)

"Taken and acknowledged
by A. B. party hereto
the day of , 1846,
at "

"Before me,
" B — C —

"A minister (or minister extra-ordinary) in Chancery."

The specification being completed, it only remains to enrol it before 12 o'clock on the day of the expiration of the time allowed in the letters patent. All specifications are open to public inspection upon payment of a small fee, and books are kept at the Patent Office, Serle Street, Lincoln's Inn, which contain a list of all patents in force. These books may be inspected, by permission of the clerk, without any charge.

Extension of Term of Letters Patent.—If a patentee finds that the time allowed him by the patent is not sufficient to remunerate him for the trouble and expense of his invention and patent, he may apply for an extension of the term. This used to require a petition to parliament, but by the 5 & 6 Wm. IV. c. 82, the patentee, after advertising his intention to apply for an extension of his patent in the manner required by the act, may petition the king in council. Any person wishing to oppose the extension must enter a caveat at the Privy Council Office, and the petitioner and enteror of the caveat or caveaters are heard by their counsel before the Judicial Committee, which reports to the king; and the king is authorised, if he shall think fit, to grant new letters patent for the same invention for a term not exceeding seven years after the expiration of the first term. The application must be made so as to allow time for the grant before the conclusion of the original term, according to 5 & 6

Wm. IV. c. 82; but this condition is somewhat modified by 2 & 3 Vict. c. 67. By the 7 & 8 Vict. c. 69, § 2, a patentee may obtain an extension of the term for any time not exceeding fourteen years, "subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said act of the sixth year of the reign of his late majesty" (5 & 6 Wm. IV. c. 80). This act contains also other enactments applicable to the extension of time where patentees have wholly or in part assigned their right.

Scottish and Irish patents are obtained by process similar to that described for England; the applications however are made to the respective law officers of each country.

The complicated nature of the proceedings in obtaining a patent has led to the establishment of a class of persons who make it their business to obtain patents for inventors; and in case of an intricate invention, it is far better for an inventor to employ one of these "patent agents" than to run the risk of the errors and loss of time which may be occasioned by his inexperience. The fee charged by the clerks of the Patent Office, who act also as agents, is ten guineas, exclusive of the drawings and descriptions, which of course vary according to the difficulties of the subject; a small sum comparatively, when the loss of time and risk of a faulty title or specification are taken into consideration.

The time necessary for obtaining a patent is seldom less than two months, and frequently much longer. This is justly considered a great grievance, as the inventor is not secure until the grant and is attached, and no reason can be assigned for this delay, except that the patent passes unnecessarily through a great number of offices. The expense also is very heavy, and may be stated on an average at 100*l.* for England, with 5*l.* additional for the colonies, 100*l.* for Scotland, and 100*l.* for Ireland.

It is evident that there are many inventions which will not bear this outlay of capital, and the consequence is that the number of patents is much smaller than it would be if the charges were less; and

the public lose by this. The inventor, if he procure a patent, will take care that although he may be the party inconvenienced at first by the outlay, the public shall pay for it eventually; but if he do not take out a patent, he will do all in his power to keep his invention secret for a longer time than the patent would have allowed. This circumstance has given rise to much of that jealousy which is so apparent among manufacturers; it has materially retarded the study of the arts, which are now fenced round with secrets and difficulties, and has been mainly instrumental in causing the great want which confessedly exists, of men conversant at once with the theory and the practice of mechanical operations.

The truth of these observations will be admitted by all who have been in any way connected with manufactures; but if any evidence be wanting to convince those who are not, the small number of patents taken out in England is quite conclusive. In 1837 the number of English patents was 254, and that of Scotch 132; the numbers in France and Prussia were much larger. Much has been said against the present law of patent, which in our opinion is unfounded in truth. There are difficulties connected with the title and specification which cannot perhaps be smoothed by any legislative enactments; but the obstacles which the law has placed in the way of inventors can be easily removed. There is nothing to prevent patents being granted in a quarter of the present time, and at a tenth part of the present expense. When this is done, the number of patents will rapidly increase; talent, which is inert for want of motive, will be called into action, and the workshop will no longer be closed against the philosophic inquirer.

PATENT LETTERS. [LETTERS PATENT.]

PATERNITY. [BASTARD.]

PATRIARCH. [BISHOP, p. 377.]

PATRICIANS AND PLEBEIANS. [NORILITY; AGRARIAN LAWS.]

PATTERNS. [COPYRIGHT, p. 645.]

PATRON. [ADVOVSON; BENEFICE; PARISH; CLIENT.]

PAUPERISM. [POOR LAWS AND PAUPER; SETTLEMENT.]

PAWN. [PLEDGE.]

PAWNBROKERS. All persons who receive goods by way of pawn or pledge for the repayment of money lent thereon at a higher rate of interest than five per cent. per annum, are pawnbrokers. In pawning, the goods of the borrower are delivered to the lender as a security. [PLEDGE.]

The business of lending money on pledges is in many countries carried on under the immediate control of the government as a branch of the public administration; and where only private individuals engage in it, as in this country, it is placed under regulations. Thus in China, where pawnbrokers are very numerous, Mr. Davis says ('Chinese,' vol. ii. p. 438) they are under strict regulations.

The 12 Anne, stat. 2, c. 16, fixed the legal rate of interest at 5 per cent. per annum; but the interest which pawnbrokers are allowed to charge is regulated by a special statute, the 39 & 40 Geo. III. c. 99, passed 28th of July, 1800. This act fixes the rates of interest allowed on goods or chattels placed in the hands of pawnbrokers according to the following scale:—

For every pledge upon which there shall have been lent any sum not exceeding 2s. 6d., the sum of $\frac{1}{2}$ d., for any time during which the said pledge shall remain in pawn not exceeding one calendar month, and the same for every calendar month afterwards, including the current month in which such pledge shall be redeemed, although such month shall not be expired. If there shall have been lent the sum of 5s., one penny; 7s. 6d., one penny halfpenny; 10s., two-pence; 12s. 6d., two-pence halfpenny; 15s., three-pence; 17s. 6d., three-pence halfpenny; 20s., four-pence; and so on progressively and in proportion for any sum not exceeding 40s.; but if exceeding 40s. and not exceeding 42s., eight-pence; if exceeding 42s. and not exceeding 10l., after the rate of three-pence for every 20s., by the calendar month, including the current month, and so on in proportion for any fractional sum. Persons may redeem goods within seven days after the expiration of the first calendar month with-

not paying interest for the extra seven days; or within fourteen days on paying for one month and a half; after which time interest is charged for two calendar months.

Pawnbrokers are required by the act to keep books in which all goods taken in pledge must be entered and described, the sum advanced upon them, and the name and abode of the pledgor, and whether he is a housekeeper or a lodger. They make out at the time two memoranda of these particulars, one of which is given to the pledgor. This duplicate is given gratis in all cases where the sum advanced is under 5s.; when it is 5s. and under 10s., one halfpenny is charged; 10s. and under 20s., one penny; 1l. and under 5l., twopenny; 5l. and upwards, four pence. Articles pledged for sums above 5s. must be entered in the pawnbroker's books within four hours; and those on which 10s. or upwards have been advanced must be entered in a separate book and numbered, the first entry in each month commencing No. 1. The number and description of the pledge in the books and on the duplicate correspond with each other. Articles cannot be taken out of pawn without the production of the duplicate, the holder of which is assumed to be the owner; and accordingly duplicates are often sold by the pledgor when he wants money, and they are transferred from one to another like any other saleable article. If a duplicate should be lost or stolen, the pawnbroker is required to give a copy of it to the person who represents himself as the owner of the articles pledged, with a blank form of affidavit, which must be filled up with a statement of the circumstances under which the original duplicate was lost, to the truth of which deposition an oath must be made before a magistrate. For this second duplicate the pawnbroker is entitled to demand one halfpenny, if the sum advanced does not exceed 5s.; from 5s. to 10s., one penny; and afterwards in the same proportion as for the original duplicate.

The penalty against unlawfully pawning goods the property of others is between 50s. and 5l., besides the full value of the goods pledged; and in default of

payment, the offending party may be committed for three months' imprisonment and hard labour. Persons buying or counterfeiting duplicates, or not being able to give a good account of themselves on offering to pawn goods, are liable to imprisonment for any period not exceeding three months. Pawnbrokers or other persons buying or taking in pledge unfinished goods, linen, or apparel entrusted to others to wash or mend, are to forfeit double the sum advanced and to restore the goods. The act empowers police officers to search pawnbrokers' houses or warehouses when suspected to contain unfinished goods unlawfully pledged, and goods unlawfully pawned must be restored to the owner by the pawnbroker.

All pawned goods are deemed forfeited at the end of one year. If redeemed, the pawnbroker must endorse on his duplicate the charge for interest, and keep it in his possession for one year. Articles on which sums have been advanced of 10s. and not exceeding 10l. if not redeemed, must be sold by auction, after being exposed to public view and at least two days' notice having been given of the sale. The catalogue of sale must contain the name and abode of the pawnbroker, the month in which the goods were received, and their number as entered in the books and on the duplicate. Pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, canvases, intaglios, musical, mathematical, and philosophical instruments, and china, must be sold separate from other goods, on the first Monday in January, April, July, and October in every year. On notice not to sell given in writing, or in the presence of two witnesses, from persons having goods in pledge, three months further are allowed beyond the year for redemption. An account of sales of pledges above 10s. must be entered in a book kept by the pawnbroker, and if articles are sold for more than the sum for which they were pledged, with interest thereon, the owner is entitled to the overplus, if demanded within three years after the sale. Pawnbrokers' sale-books are open to inspection on payment of a fee of one penny. The penalty on pawnbrokers selling goods before the proper time, or injuring or losing them,

and not making compensation to the owner, according to the award of a magistrate, is 10*l*. They are required to produce their books on the order of a magistrate in any dispute concerning pledges, and are not to purchase goods which are in their custody. The act extends to the executors of pawnbrokers.

The Pawnbrokers' Act prohibits pledges being taken from persons intoxicated or under twelve years of age; and by the Metropolitan Police Act (2 & 3 Vict. c. 47), a fine of 5*l*. is inflicted upon pawnbrokers taking pledges from persons under the age of sixteen. Pawnbrokers are prohibited from buying goods between the hours of 8 A.M. and 7 P.M.; or receiving pledges from Michaelmas-day to Lady-day before 8 A.M. or after 8 P.M.; or for the other part of the year, before 7 A.M. or after 9 P.M., excepting on Saturdays and the evenings preceding Good Friday and Christmas-day, when the hour for closing is extended to 11 P.M. They are required to place a table of profits and charges in a conspicuous part of their places of business.

Pawnbrokers are required to take out an annual licence from the Stamp Office; and, to enable them to take in pledge articles of gold and silver, a second licence is necessary, which costs 5*l*. 15*s*. Those who carry on business within the limits of the old twopenny-post pay 15*l*. a year for their licence, and in other parts of Great Britain 7*l*. 10*s*. The licence expires on the 31st of July, and a penalty of 50*l*. is incurred if it is not renewed ten days before. No licence is required in Ireland, but those who carry on the business of a pawnbroker must be registered.

In 1833 the number of pawnbrokers in the metropolitan district was 368; 386 in 1838; and 383 in 1842; in the rest of England and Wales the number was 1683 in 1833; 1194 in 1838; and 1304 in 1842; in Scotland the number was 52 in 1833; 48 in 1838; and 133 in 1842; making a total of 1820 establishments in 1842, which paid 16,522*l*. for their licences, besides the licence which many of them take out as dealers in gold and silver. The increase in England is to a considerable extent chiefly in places

where the business of a pawnbroker has not hitherto been carried on; and in Scotland, according to the 'New Statistical Account,' the extent of this change is remarkable. The business of a pawnbroker was not known in Glasgow until August, 1806, when an itinerant English pawnbroker commenced business in a single room, but decamped at the end of six months; and his place was not supplied until June, 1813, when the first regular office was established in the west of Scotland for receiving goods in pawn. Other individuals soon entered into the business; and the practice of pawning became as common that, in 1820, in a season of distress, 2043 heads of families pawned 7389 articles, on which they raised 739*l*. 1*s*. 6*d*. The capital invested in this business in 1840 was about 26,000*l*. Nine-tenths of the articles pledged are redeemed within the legal period. (Dr. Cleland's 'Former and Present State of Glasgow,' 1840.) There are no means of ascertaining the exact number of pawnbrokers' establishments in the large towns of England. A return of the amount and nature of the dealings of pawnbrokers would supply much valuable evidence of the condition and habits of the people. The only return of the kind which we have seen was supplied by a large pawnbroking establishment at Glasgow to Dr. Cleland, who read it at the meeting of the British Association for the Advancement of Science in 1836. The list comprised the following articles:—539 men's coats, 353 vests, 288 pairs of trowsers, 84 pairs of stockings, 1980 women's gowns, 540 petticoats, 132 wrappers, 123 duffles, 90 pelisses, 240 silk handkerchiefs, 294 shirts and shifts, 60 hats, 84 bed-ticks, 168 pillows, 262 pairs of blankets, 300 pairs of sheets, 162 bed-covers, 36 table-cloths, 42 umbrellas, 102 Bibles, 204 watches, 216 rings, and 48 Waterloo medals. It was not stated during what period these articles were received. There were at that time in Glasgow above thirty pawnbrokers. In the manufacturing districts during the prevalence of "strikes," or in seasons of commercial embarrassment, many hundreds of families pawn the greater part of their wearing-apparel and household furniture. (Paper read

1837 by Mr. Ashworth, of Bolton, the Preston Strike in 1836.) The high-receve of Manchester stated on one occasion (April, 1840) that a woman had shown him sixty-seven tickets from one family, and he there were thousands in similar circumstances "going inch by inch," in consequence of the stagnation of industry.

practice of having recourse to the pawnbrokers on such occasions is quite a recent thing from the habits of those "on being paid their wages on the day, are in the habit of taking their day clothes out of the hands of the pawnbroker to enable them to appear respectably on the Sabbath, and on the day following they are again pawned, a fresh loan obtained to meet the exigencies of their families for the remainder of the week." It is on these occasions and on such as arise out of desire of obtaining some momentary relief that the pawnbrokers make large profits. It is stated in one of Hoopers on the Poor-Laws, that a

if redeemed the same day, pays interest at the rate of 5200 per cent. weekly, 800 per cent.

1000 per cent.; weekly, 630 per cent.

2000 " " 433 "

1733 " " 288 "

1300 " " 216 "

a petition presented to parliament 1839, it is stated, that on a capital of thus employed (in weekly loans) pawnbrokers make in twelve months 2d.; on 5s. they gain 10s. 4d.; on 10s. they gain 22s. 3d.; and on 20s. in weekly loans of sixpence, they more than double their capital in twenty weeks; and should the goods not be redeemed in their hands for the space of twelve months (which seldom occurs), they then derive from 20 to 100 per cent. The 'Loan Fund Societies,' which are protected by an Act of the Legislature, and advance small sums or 15l. at 5 per cent., are of no advantage to the habitual dependants upon pawnbrokers.

The 'Pawnbrokers' Gazette' is a weekly publication, which contains advertisements of sales, and other

information of use to the trade, amongst whom it exclusively circulates.

The act for the regulation of pawnbrokers in Ireland is the 28 George III. c. 43 (Irish statute). It requires pawnbrokers to take out licences and to give securities; appoints the marshal of the city of Dublin corporation registrar of licences; directs returns to be made to him monthly, upon oath, of sums lent; and allows the registrar a fee of one shilling on each return. The stamp duty on licences amounted to 2775l. in 1842.

In 1827 Mr. Harrington founded the Limerick Mount de Piété, as a means of providing funds for the public charities of that city. He erected buildings at his own expense, and sent competent persons to Paris to make themselves acquainted with the mode of conducting the Mount de Piété in that capital. A capital of 4000l. was raised on debentures, bearing interest at 6 per cent.; and the establishment was opened on the 13th of March, 1827, under the control of a committee. In the course of eight months 12,000l. had been lent on 70,000 pledges at a rate of interest amounting to one farthing per month for a shilling, no charge being made for duplicates. Six-sevenths of the amount advanced was in sums under 5s. Four months after the establishment was opened, the value of articles redeemed on Saturdays averaged about 140l., the interest on which amounted to 5l. 5s. 6d., while the pawnbroker's charge would have been 9l. Towards the close of the year 1829 Mr. Harrington published a short pamphlet showing the further progress of the institution. The capital had been increased to 15,350l., and a clear profit of 1736l. had been realised since March, 1827. Small sums are lent to poor persons of known respectability of character on their personal security. This plan is attended with valuable effects upon the conduct and character of the poorer classes.

In Appendix E, 'Poor Inquiry (Ireland),' there is an account of the Alacrity Loan Society, which shows that where individuals can be found to superintend the details, the various evils of applying to pawnbrokers may be partially

obviated. This Society had borrowed 720*l.*, partly from the county Galway trustees, which sum had been disposed among 400 borrowers, and no loss had occurred during the two years in which the Society had been in operation, chiefly in consequence of the attention of the Rev. H. Hunt, the treasurer. In the evidence taken at an examination by the Commissioners of Inquiry in the county Leitrim (p. 93) it was stated that there were no pawnbrokers in the barony; but a class of men called usurers are to be met with in every direction, "and they bind both borrowers and sureties by solemn oaths to punctual repayment of the principal, and of the interest, which is exorbitant in proportion to the smallness of the sum lent." The witness, who was a magistrate, further stated, that a case had recently come before Lord Clements and himself, in which a man had bound himself to pay 12*s.* a year in quarterly instalments for the use of 15*s.* principal. Such facts show the expediency of affording every encouragement to establishments conducted under the immediate control of the law. In some instances in Ireland pawnbrokers keep spirit-shops under the same roof or in an adjoining house. The Report just quoted states that people were beginning to lose their reluctance to wear the forfeited property of their neighbours; and most of the poor persons examined stated that a few years ago they were ashamed to go to the pawnbrokers, but this feeling appeared then to have been much weakened. The scarcity of capital in Ireland occasions many individuals to have recourse to pawnbrokers for purposes unknown in England, such as obtaining the means of purchasing a pig or buying seed.

The Mont de Piété is an institution of Italian origin. [MONT DE PIETE.] In 1661 a project existed for establishing Monts de Piété in England. It is extremely doubtful whether a public institution for lending money on pledges would answer in London. Many branch establishments would be necessary, and they would scarcely be so economically conducted as the establishments belonging to private individuals. The rates of interest charged by pawnbrokers are

high; but the average profits of their trade are not so great as might be inferred from a hasty glance at the preceding tables, which nevertheless fully prove that having recourse to pawnbrokers is an improvident mode of raising money. It is, however, a great convenience to many persons who could not raise money for temporary purposes in any other way. Those pawnbrokers who take out a licence to receive pledges in gold and silver do a considerable amount of business in that way, and of course not with the poorest classes. In 1838 a company was formed in London, called the 'British Pledge Society,' which proposed lending money at one-half the rate of interest allowed by the 39 & 40 George III. c. 99, and without making any charge for duplicates. This society also pledged itself to make good losses in case of fire, for which casualty pawnbrokers are not liable. The bill of incorporation, after being read a first time in the House of Commons, was abandoned.

There is a Mont de Piété at Moscow on a very extensive scale, the profits of which support a founding hospital. They are numerous in Belgium. From a paper read by Rawson W. Rawson before the London Statistical Society in 1837, the following appear to be the terms of the Mont de Piété of Paris:—"Loans are made upon the deposit of such goods as can be preserved to the amount of two-thirds of their estimated value; but on gold and silver, four-fifths of their value is advanced. The present rate of interest is 1 per cent. per month, or 12 per cent. per annum. The Paris establishment has generally from 600,000 to 650,000 articles in its possession, and the capital constantly outstanding may be estimated at about 500,000*l.* The expense of management amounts to between 60 c. and 65 c. on each article, and the profits are wholly derived from loans of 5 francs and upwards. Articles not redeemed within the year are sold, subject however, as in England, to a claim for restoration of the surplus, if made within three years."

The statistical tables published by the French minister of commerce show the

dunes of the Mont de Piété of Paris some of the large towns in France in the year 1833. The number of articles pledged in Paris in 1833 was 268,511; average sum advanced on 14s. 11d. The number of articles sold was 844,861; on 17s. 9½d. the interest was paid and the duplicates sold; 50,556 articles, on which sum of 35,291l. had been advanced, forfeited, being one-twentieth in sum, but less than one-twentieth in value.

ECCLIASTICAL COURT OF. [ECCLESIASTICAL COURTS, p. 803.]

PEDLAR. This word is said by Dr. Johnson to be a contraction from *petty*, borrowed into a new term by long-handling men; and a pedlar is defined as to be "one who travels the country with small commodities." The same writer defines a hawker to be "one who sells wares by proclaiming them in street."

In legal sense of hawker is an itinerant trader, who goes about from place to place, carrying with him and selling goods; and a pedlar is only a hawker in small wares. In the various acts of parliament which impose duties on them and regulate their dealings, they are always named in conjunction as hawkers and pedlars; and no distinction is made between them.

It has been for more than a century a custom in England that the conduct of the trade by means of fixed establishments is more beneficial to the public than that of itinerant dealers; and it cannot be doubted that the local trader being better informed and more dependent upon his character than one who continually travels from place to place, there is a greater responsibility for the respectability of his dealings.

Accordingly statutes have been from time to time, which require hawkers and pedlars to take out licences, to submit to specific regulations and actions, which are supposed to protect the resident trader as well as the public from unfair dealing. These regulations, however, have been given substance to justify the laws; for the acts which originally required licences for hawkers and imposed those

duties appear to have merely contemplated a means of increasing the revenue; and that this was the object of the legislature appears from the fact of pawnbrokers and others having been also required to take out licences. (8 & 9 Wm. III. c. 25; and 9 & 10 Wm. III. c. 27.)

The provisions by which the licences to hawkers and pedlars are now regulated are contained in the statute 50 George III. c. 41. By that Act, the collection and management of the duties on hawkers and pedlars in England was given to the commissioners for licensing and regulating hackney coaches; but this duty has since been transferred to the commissioners of stamps by the 75th section of the statute 1 & 2 Wm. IV. c. 22. By the provisions of the latter statute, "all the powers, provisions, regulations, and directions contained in the statute 50 George III. c. 41, or any other act relating to the duties on hawkers and pedlars, are to be enforced by the commissioners of stamps; and all the powers, provisions, regulations, and directions, forfeitures, pains and penalties imposed by any acts relating to the management of duties on stamps, so far as the same are applicable to the duties on hawkers and pedlars, are declared to be in full force and effect, and are to be applied and put in execution for securing and collecting the last-mentioned duties, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully as if they were repeated and specially enacted in the statute 1 & 2 Wm. IV. c. 22." The duty of granting licences to hawkers and pedlars and enforcing the law against such persons is now therefore intrusted to the commissioners of stamps; the particular conditions and regulations under which such licences are to be granted are contained in the above-mentioned statute 50 George III. c. 41.

Before a licence is granted to a person desirous of trading and travelling as a hawker or pedlar, the applicant must produce to the commissioners of stamps a certificate, signed by the officiating clergyman and two householders within the parish in which he resides, attesting

that he is of good character and a fit person to be licensed. Upon this certificate being given, the commissioners grant the licence, which is only in force for one year, and the party who receives it is subject to a duty of 4*l.* per annum, and an additional duty of 4*l.* per annum for each beast if he travels with a "horse, ass, mule, or other beast bearing or drawing burthen;" and these duties are to be paid at the time of receiving the licence. The duties have not been altered since 1789. All persons who act as hawkers or pedlars without such a licence are liable to a penalty of 50*l.*

Among other regulations, the hawker or pedlar is required by the Act to "cause to be written in large legible Roman capitals, upon the most conspicuous part of every pack, box, bag, trunk, case, cart, or waggon, or other vehicle in which he carries his goods, and of every room and shop in which he trades, and likewise upon every handbill or advertisement given out by him, the words 'Licensed Hawker,' together with the number, name, or other mark of his licence;" and in case of his omission so to do, he is liable to a penalty of 10*l.*; and every unlicensed person who places these words upon his goods is liable to a penalty to the like amount. A hawker and pedlar travelling without a licence, or travelling and trading contrary to or otherwise than is allowed by the terms of his licence, or refusing to produce his licence when required to do so by inspectors appointed by the commissioners, or by any magistrate or peace-officer, or by any person to whom he shall offer goods for sale, is liable in each case to a penalty of 10*l.* A person having a licence, and hiring or lending it to another person for the purpose of trading with it, and also the person who so trades with another's licence, are each liable to a penalty of 40*l.* A hawker or pedlar dealing in or selling any smuggled goods, or knowingly dealing in or selling any goods fraudulently or dishonestly procured, forfeits his licence, and is for ever afterwards incapacitated from obtaining or holding a new licence. By the stat. 48 Geo. III. c. 84, s. 7, if any hawker or

pedlar shall offer for sale tea, brandy, rum, geneva, or other foreign spirits, tobacco, or snuff, he may be arrested by any person to whom the same may be offered, and taken before a magistrate, who may hold him to bail to answer for the offence under the Excise laws.

By the provisions of the statutes 29 Geo. III. c. 26, § 6, and also of 50 Geo. III. c. 41, § 7, no person coming within the description of a hawker or pedlar can lawfully, either by opening a shop and exposing goods to sale by retail in any place in which he is not a householder or resident, or by any other means, sell goods either by himself or any other person by outcry or auction, under a penalty of 50*l.* Hawkers were not allowed formerly to sell goods in market-towns, except on a fair or market day; but this restriction was done away with by 35 Geo. III. c. 91.

It is further provided by the 18th section of the 50 Geo. III. c. 41, that if any person shall forge or counterfeit any hawker's or pedlar's licence, or travel with, or produce, or show any such forged or counterfeited licence, he shall forfeit the sum of 300*l.* Persons who hawk fish, fruit, victuals, or goods, wares, or manufactures made or manufactured by such hawkers, or by their children, are not required to take out a licence; nor are tinkers, coopers, glaziers, plumbers, harness-menders, or other persons usually trading in mending kettles, tals, household goods, or harness of any kind. (*Chitty's Commercial Law*, vol. ii. p. 163; *Burn's Justice*, tit. 'Hawkers'.)

The amount raised by these licences is too insignificant as an object of revenue. They are in fact a tax on the consumers, like all other licences. The true policy is to let a person sell his goods where and how he can. Competition will ensure the consumer here, as in other cases, the best and cheapest article. The pedlar carries his wares into districts where the people have not access to the best markets, and thus he tends to correct the dealings of the settled trader. He also carries his wares to people who would often not know of the existence of them. The hawker is now one of the active instruments in diffusing cheap

books among the population, and a large part of the sale of the cheap periodicals is in his hands, particularly in the north of England and in Scotland. Thirty years ago, Francis Horner, writing to Donald Macintyre, of Glasgow, speaks of "that very remarkable traffic in books round Glasgow by itinerant retailers." The hawkers are therefore employed in the diffusion of knowledge, and is a great benefactor to society, and as such should be free from all taxes that are imposed on him in addition to those which he and other dealers pay.

Amount of Revenue from Hawkers' Licences:—

England.			
1800	£ 8,963	1830	25,292
1810	17,898	1840	22,512
1820	20,230	1843	27,100
Scotland.			
1840	3,284	1843	2,092

Rate paid for each Licence:—

England.	at 6d.	at 8d.	at 12d.	at 15d.
1800	5569	912	36	2
1830	6630	852	14	3
1840	6090	1005	30	2
1843	4793	997	40	2
Scotland.				
1840	765	58		
1843	411	56		

PEERS OF THE REALM. This term is equivalent to Peers of Parliament, that is, those noblemen who have a seat in the House of Lords. The 'Realm,' that is, the 'Royaume,' is the Kingdom of England. Scotland and Ireland have also their peers; but those who are simply peers of Scotland and Ireland are not Peers of the Realm, or Peers of Parliament, or Peers of the United Kingdom, for all these expressions are used to signify the same thing.

Without meaning to decide the question whether the lords spiritual are strictly peers of the realm, the persons who fall under this description are the dukes, marquesses, earls, viscounts, and barons (Duke, &c.), and this without reference to the accident of age: an earl, for instance, is a peer of the realm, though a minor, but he does not sit or vote in

the House of Lords till he is twenty-one. Women may also be peeresses of the realm in their own right, as by creation, or as inheritors of baronies which descend to heirs general, but they have no seat or vote in the house of lords. The wives of peers are peeresses.

On the remote origin of this order, and of the privileges belonging to it, especially that form of a house, in which, in concurrence with the spiritual lords, they consider every proposal for any change in the laws of the realm, and have an affirmative or a negative voice respecting it, and of being also the supreme court of judicature before whom appeal may be made from the judgment of nearly all inferior courts, great obscurity rests. The reports of the committee of the house of peers, which sat during several parliaments about the years 1817, 1818, and 1819, on the dignity of a peer of the realm, contain a great amount of information on these topics, but leave undecided some of the greater and more important questions connected with it.

Every peer of the realm, being of full age and of sound mind, is entitled to take his seat in the house of peers, and to share in all the deliberations and determinations of that assembly. He has privilege (perhaps not very distinctly defined) of access to the person of the king or queen regnant to advise concerning any matter touching the affairs of the realm. If peers of the realm are charged with any treason, felony, misprision, or as accessories, they are not subject to the ordinary tribunals, but the truth of the charge is examined by the peers themselves; they cannot be arrested in civil cases; they give their affirmation on honour when they sit in judgment, and answer bills in chancery upon honour; but when examined as witnesses they must be sworn. 'Words,' says Blackstone, (Book iii. c. 8) 'spoken in derogation of a peer, a judge, or other great officer of the realm, which are called *scandalum magistrum*, are held to be still more heinous; and though they be such as would not be actionable in the case of a private person, yet when spoken in disgrace of such high and respectable

characters, they amount to an atrocious injury, which is redressed by an action on the case founded on many ancient statutes; as well on behalf of the crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injury sustained.

Peers are tried for misdemeanors in the same way as other people. The lords spiritual are also, in all cases, tried by the ordinary courts. Peeresses have the same privileges as peers, whether they are peeresses by birth, creation, or marriage; but if a peeress by marriage marry a commoner, she loses her privileges.

The crown may at its pleasure create a peer, that is, advance any person to any one of the five classes; which is now done either by writ or patent. [BARON; LETTERS PATENT; NOBILITY.] A peer cannot be deprived of the dignity or any of the privileges connected with it, except on forfeiture of the dignity by being attainted for treason or felony; and the dignity must descend, on his death, to others (as long as there are persons within the limitation of the grant), with all the privileges appurtenant to it, usually to the eldest son, and the eldest son of that eldest son in perpetual succession, and so on, keeping to the eldest male representative of the original grantee. Some deviation from this rule of descent, however, has occasionally occurred, special clauses having been introduced into the patent, which limit the descent of the dignity in a particular way, as in the case of the creation of Edward Seymour to the dukedom of Somerset, in the reign of Edward VI., when it was declared that the issue of the second marriage of the duke should succeed to the dignity in preference to the son of a former marriage. But generally, and perhaps universally for the two last centuries, the descent of a dignity (cases of baronies in fee, as they are called, being now for a moment excluded) has been to the next male heir of the blood of the person originally ennobled; sometimes with remainders to the next male heir of his father or grandfather.

The crown has sometimes granted the dignity of the peerage to a person, with remainder to the female issue or to the female kindred of the grantee and their heirs, as in the case of the Nelson peerage. In these cases it has generally happened either that the party had no male issue to inherit, and that the other males of the family were also without male issue, or that there was already a dignity inheritable by the male heir of the party on whom a new dignity was conferred to descend to his female issue. A pension has also sometimes been settled by Parliament on a person, at the time when he has been made a peer; the pension is granted by the Parliament on the recommendation of the crown.

The peers who possess what are called baronies in fee, are the descendants and representatives of certain old families, for the most part long ago extinct in the male line, but which had in their day summons to parliament as peers, and whose dignity it has been assumed descended like a tenement to a daughter, if only one daughter and heir, or to a number of daughters as coheirs, when there was no son. If A. die seised of a barony in fee, leaving B. a daughter and only child, and M. a brother, the dignity shall inhere in B. in preference to M., and shall descend on the death of B. to her eldest son. In case A., instead of leaving B. his only daughter, leave several daughters, B., C., D., &c. and no son, the dignity shall not go to M., but among the daughters; and since it is imparticipable, it is in a manner lost as long as those daughters, or issue from more than one of them, exist. But should those daughters die with only one of them having left issue, and that issue a son, he shall inherit on the death of his aunts. This is what is meant by the dignity of a peer of the realm being *in abeyance*: it is divided among several persons, not one of whom possessing wholly, none of them can therefore enjoy it. [ABEYANCE.] But the crown has the power of determining the abeyance; that is, it may declare its pleasure that some one of the daughters, or the eldest male representative of some one

daughters, shall possess the dignity would have been the case had been a single daughter only; and as of an heir thus entering into view of the dignity, he shall take precedence among the barons in the of peers which belonged to the of whom he is the representative male who is only a coheir of a may also have the abeyance decided in her favour, as was lately the case with Mrs. Russell, now Baroness De St. It is out of this privilege of view that the peerage cases arise, and there are some before the house in almost every session of parliament. A party was reason to think the crown may be induced to do so a certain abeyance in his favour, can only prove that he is the relative of one of the coheirs. This which is often a troublesome and slow process, inasmuch as it may seem to go back into the fourteenth century, is to be made satisfaction of a committee of peers, and on the of such committee that the claimant shows himself in a satisfactory or to be the proper representative blood of one of the coheirs of one an ancient baronage, the crown has a years often yielded to the request. In fact, without this, in a very like case, where lands often of to female heirs, it would be to maintain a really ancient of.

any of the peers who belong to the of orders of nobility have baronies inherent in them; so that if A., of them, die, leaving a daughter an only child, and a brother, the shall take the superior title, and every descend to the daughter and hers of her body. An eldest son of enjoying a barony and a superior is sometimes called to the house in his father's barony. When done, it is by writ of summons on a patent of creation (it not being a creation of a new dignity, but in satisfaction of the son's possession it), and this is the case also when is taken out of abeyance.

Thus the English portion of the house of peers, or house of lords, for they are termed in precisely the same sense, are the lords spiritual, that is, the archbishops and bishops, and the lords temporal, who are of one of the five orders (though many of the dukes possess dignity of the four inferior kinds also, and their ancestors may have long had seats in that house in those inferior dignities before the family was raised to the dukedom), and these are either persons who have been created peers by the crown—who have been admitted into the peerage by favour of the crown in virtue of the determination of an abeyance, or who have inherited the dignity from some ancestor in whom it had been conferred.

The fullest information on all points connected with the archæological part of this subject is to be obtained from the Reports of the Committee of the House of Lords before referred to. Biographical accounts of the more eminent of the persons who have possessed these dignities, are to be found in that very valuable book, Dugdale's *Baronage of England*. In 1768, Arthur Collins, a London bookseller, published in a single volume, an account of the peers then existing and their ancestors, a work of great merit. The demand for it appears to have been great, as it was followed by other editions in quick succession. It assumed a higher character in 1784, when it appeared in four handsome octavo volumes, great additions having been made to every article. From that time there has been a succession of editions, each professing to be improvements on the preceding, and each bringing up the state of the peerage to the time when the work was printed. The best of these, which is in nine bulky octavo volumes, was published under the superintendence of Sir Egerton Brydges. But as titles become extinct, and, consequently, the families bearing them are left out of the peerage-books, those who wish to possess a complete account of those persons, must procure many of the earlier editions of the work, as well as that which, being the latest, will, for the most part, be called the best.

PEINE FORTE ET DURE. The "strong and hard pain," which is denoted by these words, was a species of torture used by the English law to compel persons to plead, when charged with crimes less than treason, but amounting to felony. It was applicable whenever the accused stood mute on his arraignment, either by his refusal to put himself upon the ordinary trial by jury, or to answer at all, or by his peremptorily challenging more than twenty jurors, which was a contumacy equivalent in construction of law to actually standing mute. This proceeding differed essentially from the torture which generally prevailed in Europe, and which, as connected with the royal prerogative, was also practised in England for several centuries, inasmuch as the object of the *peine forte et dure* was to force submission to the regular mode of trial prescribed by the law, and not to compel testimony or the confession of a crime.

The origin of this practice is uncertain. It appears from Fleta, and also from Britton (cap. 22), that the punishment in the reign of Edward I., when the first traces of it appear, consisted merely of severe imprisonment, with a diet barely sufficient to prevent starvation, until the offender repented of his contumacy, and consented to put himself upon his trial. Shortly afterwards, however, the practice of loading the sufferer with weights and pressing him to death appears to have become the regular course. In the 'Year Book,' 8 Henry IV., 1 (1406), the judgment upon persons standing mute, as approved by advice of all the judges, was "that the marshal should put them in low and dark chambers, naked except about their waist; that he should place upon them as much weight of iron as they could bear, and more, so that they should be unable to rise; that they should have nothing to eat but the worst bread that could be found, and nothing to drink but water taken from the nearest place to the gaol, except running water; that the day on which they had bread they should not have water, and *à contrà*; and that they should lie there till they were dead." There is no trace of any statute

or royal ordinance, or of any authority besides this judicial resolution, to justify a change in the mode of proceeding so material as to affect the life of the party. The term by which it was denoted was also changed from *prisonne* to *peine forte et dure*; and from this period, for more than three centuries, until it was virtually abolished by the stat. 12 Geo. III. c. 20 (1772), pressing to death continued to be the regular and lawful mode of execution for persons who stood wilfully mute upon their arraignment at felony. The press-yard at Newgate to the present day retains its name as derived from this barbarous practice.

Blackstone states that the *peine forte et dure* was rarely carried into practice (*Commentaries*, vol. iv. p. 328). It is probable that it was not of frequent occurrence, because, with this fearful punishment for contumacy before their eyes, men would naturally, for the most part (as Hale says), "bethink themselves and plead." It is, however, repeatedly mentioned in the Year Books as an existing proceeding; it is stated as the law by Staundforde, Coke, Hale, and Hawkins, in their several treatises on the Criminal Law, and the number of recorded instances in which it is directly or incidentally mentioned, seem to show that it was much more prevalent than has been commonly supposed. The motive of the prisoner in standing mute and submitting to this heavy punishment was to save his attainder, and prevent the corruption of his blood and consequent forfeiture of his lands in case he was attainted of felony. In the 21st of Henry VI. (1442), Juliana Quicke, who was indicted for high treason, in speaking contemptuous words of the king, had the *peine forte et dure* because she would not plead (Croke's *Charles*, 118); in the margin of an inquisitorial post mortem of Anthony Arrowsmith, in the 40th of Eliz. (1598), are the words "Prest to death" (Surtees's *History of Durham*, vol. iii. p. 271); and in 1559 Major Strangeways was tried for the murder of John Fussell, before Lord Chief Justice Glynn, and, refusing to plead, was pressed to death in Newgate. In the pamphlet which very minutely narrates

lecture of this execution, it is said that the prisoner died in about ten days, many people in the prison actually casting money upon him as he died. (*Barreington's Annals*, p. 88, note.) In still more times, it appears from the *Old London Papers*, that at the Sessions in 1720 one Phillips and for a considerable time, until all to finish his trial; and at the Sessions, 1721, Nathaniel continued under the press, with the seven minutes, and was taken by his submission. Mr. Barreington says that he had been furnished to business in the reign of Henry, one of which happened at the same time before Baron Thompson, the other at Cambridge, in 1744, Mr. Baron Carter was the judge. (*Barreington's Annals*, p. 36.) Later instances the press was not used by direction of the judges, but of a minor nature had it, by tying the culprit's thumbs together with strings. It is said in *Barreington's Annals*, p. 27, to have been used at Newgate, in 1744, at the Sessions, that the press should be used together with it, that the press might compel it to stand. The adoption of this was at first disapproved by the judges, and was intended by the judges on the necessity of having some other means of doing so, but it was finally discontinued in consequence of the statute 12 Geo. III. cap. 24, which provides that every person who shall make when arraigned by or for any shall be convicted, and the same judgment and shall be awarded against him that has been convicted by torture.

PENANCE (in Latin, *Penitentia*) is a or punishment, imposed by the civil law, for the purgation or atonement of an offender, in case of some crime of spiritual law committed by him. Thus a convict of adultery or incest is obliged to do penance in the church

or church, bare-legged and bare-headed in a white sheet; and was required to make a public confession of his crime, and to express his contrition in a prescribed form of words. After a judgment of penance has been pronounced, the ecclesiastical courts may, upon application by the party, take off the penance, and exchange the spiritual sentence for a sum of money to be paid and applied to pious use. This exchange is called a commutation for penance; and the money agreed or enjoined to be paid upon such a commutation may be used for in the ecclesiastical court. The pains for or done imposed upon a person who stood sure on his trial at the common law is often immediately termed penance. [*Penance* *foura* *et* *divina*.]

PENITENTIARIES. [*Penitentia* *et* *carcer*.]

PENSION, a payment, generally made annually or at some other shorter and regular period.

Before the reign of Queen Anne, the kings of England alienated or encumbered their hereditary possessions at pleasure. By the 1 Anne, c. 7, the power of alienating the revenue of the crown by improvident grants, to the injury of the necessities of the crown, was materially abridged. This statute, after reciting that "the necessary expenses of supporting the crown, or the greatest part of them, were formerly defrayed by a land revenue, which hath from time to time been impaired and diminished by the grants of former kings and queens of this realm," enacts that no grant of manors, lands, &c. shall be made by the crown from and after the 25th of March, 1703, beyond the term of thirty-one years, or for three lives, reserving a reasonable rent. As this clause applied only to the land revenue, it was enacted by another clause, that no portion of other branches of revenue, as the excise, post-office, &c., should be alienable by the crown beyond the life of the reigning king. On the accession of George III., in consideration of the arrears of the larger branches of the hereditary revenue, a civil list was settled on his majesty, amounting originally to 800,000*l.*, and afterwards increased to

900,000*l.*, on which the pensions were charged. There were no limits, except the Civil List itself, within which the grant of pensions was confined; and at various times, when debts on this list had accumulated, parliament voted considerable sums (Sir Henry Parnell, in his work on 'Financial Reform,' says "some millions") for their discharge. In February, 1780, during the administration of Lord North, Mr. Burke introduced his bill for the better security of the independence of parliament, and the economical reformation of the civil and other establishments. In this bill it was recited that the pension lists were excessive, and that a custom prevailed of granting pensions on a private list during his majesty's pleasure, under colour that in some cases it may not be expedient to divulge the names of persons on the said lists, by means of which much secret and dangerous corruption may be hereafter practised. Mr. Burke proposed to reduce the English pension list to a maximum of 60,000*l.*, but the bill, as passed, fixed it at 95,000*l.* This act (22 Geo. III. c. 82) asserted the principle that distress or desert ought to be considered as regulating the future grants of such pensions, and that parliament had a full right to be informed in respect to this exercise of the prerogative, in order to ensure and enforce the responsibility of the ministers of the crown. Mr. Burke's speech on introducing his bill is in the third volume of his 'Works,' ed. 1815.

Up to this time the Civil List pensions of Ireland, the pensions charged on the hereditary revenues of Scotland, and the pensions charged on the $4\frac{1}{2}$ per cent. duties, had not been regulated by parliament.

In Ireland the hereditary revenue of the crown was used as a means of political corruption, the English act of 1 Anne, already cited, not being applicable to Ireland. In a speech of Mr. Hutchinson, secretary of state, made in the Irish House of Commons, in June, 1793, he stated that the gross annual hereditary revenue of Ireland amounted to 764,627*l.*, reduced by various charges to 275,102*l.* only: that the disposition of *this revenue was in the hands of the*

king; that "his letters and seals were the only authority for using it, and the only voucher allowed by the Commissioners of Accounts, and by the House of Commons;" and that there was no Board of Treasury executing their functions under the authority of parliament. The Irish parliament, in 1757, had come to a unanimous resolution, "That the granting of so much of the public revenue in pensions, is an improvident disposition of the revenue, an injury to the crown, and detrimental to the people." The Irish pensions then amounted to 40,000*l.*; in two years after the above resolution was passed, an addition of 25,000*l.* was made to them; and in 1778 they were nearly double the amount at which they stood in 1757. In 1787 leave was refused to bring in a bill to limit the amount of pensions, and to disable persons holding pensions for a term of years, or during pleasure, from sitting and voting in parliament. Mr. Forbes, who moved this bill, stated that "it was a practice among certain members of the house to whom pensions had been granted, to carry them into the market and expose them for sale." In 1790 Mr. Forbes again moved resolutions, stating "that the Pension List amounted to 101,000*l.*, exclusive of military pensions; that the increase of pensions, civil and military, since February, 1784, had been 29,000*l.*; and that many of these pensions had been granted to members of parliament during the pleasure of the crown." These resolutions were not adopted. In 1793, when the whole policy of the Irish government was changed, among other beneficial measures introduced and recommended on the authority of the lord-lieutenant, was a bill to limit the amount of pensions and to increase the responsibility of the Treasury, which was passed into a law. By this act (33 Geo. III. c. 34. Irish statutes), the pensions on the Civil List in Ireland were limited to 80,000*l.*, allowing a sum of 1200*l.* only to be granted in each year, until such reduction was effected. Grants held during the pleasure of the crown, and converted into grants for life to the same parties and to the same amount, were exempted from the limitations of the

This act effected a surrender of hereditary revenues for the life of king, and the principle of appropriate money by parliamentary authority, as restraints on the crown were not, ever, equal in efficiency to those stated in the English statute of Anne, as those of the act 23 Geo. III. being so, the Irish pensions amounted to 800*l.*, and the amount was not reduced to 80,000*l.* until 1814. By the 1 IV. c. 1, the Irish Pension List was further reduced to 50,000*l.*, no one exceeding 1200*l.* to be made in any year until the list was so reduced.

The statute of 1 Anne, having been enacted prior to the Union, did not affect land; and pensions were accordingly paid by the crown for life, or for lives, or in reversion, without election in amount, or in the duration of the grant, other than the amount of revenues, and the claims and burdens only upon them. By the 20 Geo. III.

the principle of parliamentary increase was established in reference to the hereditary revenues of Scotland, amount of the pensions was reduced 2,000*l.*, and no more than 800*l.* was to be granted in any one year, until such session was effected. At this period,

Civil List pensions of Scotland amounted to 29,379*l.* By the 1 Geo. c. 1, the hereditary revenues of land were placed to the account of consolidated fund.

Certain duties, called the four and a half per cent. duties, were not withdrawn from the private control of the crown in 1830, when they were surrendered by William IV. for his life, the pensions chargeable upon them continuing still. On the accession of King William IV. there was nothing there to prevent the Pension Lists of land, Ireland, and Scotland being consolidated; and this was effected by 6m. IV. c. 25, which also made provision for their reduction, on the expiration of existing interests, from an amount of 146,750*l.* net, to a future maximum sum of 75,000*l.* The Pension for England was at this period 20*l.* net; Scotland, 23,650*l.*; Ireland, 200*l.*

In 1830 the ministry of the Duke of Wellington was overthrown, on the question of referring the Civil List (which comprises the Pension List) to a select committee, Sir Henry Parrell's motion in that effect being carried by 253 against 204.

In February, 1834, in order to define with greater precision the class of persons to whom the grant of pensions ought to be confined, Lord Althorp, chancellor of the exchequer (afterwards Earl Spencer), moved resolutions to the following effect, which were agreed to by the House of Commons:—"That it is the bounden duty of the responsible advisers of the crown to recommend to his Majesty for grants of pensions on the Civil List, such persons only as have just claims on the royal beneficence, or who, by their personal services to the crown, by the performance of duties to the public, or by their useful discoveries in science and attainments in literature and the arts, have merited the gracious consideration of their sovereign and the gratitude of their country."

On the accession of Queen Victoria, in 1837, the subject of pensions was again considered; and a select committee of the House of Commons, appointed to inquire into the Civil List, recommended—"That in place of granting a sum of 75,000*l.* for Civil List pensions, her majesty should be empowered to grant in every year new pensions on the Civil List to the amount of 1200*l.*, these pensions to be granted in strict conformity with the resolutions of the House of Commons, of February, 1834." These views were adopted by the House, and embodied in the 1 Viet. c. 2, the words of the resolution being introduced into the Act. [CIVIL LIST.] Since the accession of Queen Victoria, still greater force has been given to the spirit of the Act, in consequence of the recommendations of a select committee of the House of Commons, appointed in December, 1837, to inquire how far the pensions charged on the Civil List, as settled on the accession of William IV., ought to be continued, "having due regard to the just claims of the parties, and to economy in the public expenditure." This com-

mittee, after a searching inquiry into the merits of each case on the Pension List, recommended the immediate suspension of several pensions, to be regrant on the responsibility of the government, should the circumstances of the parties render it necessary; others they considered should determine at an earlier period than specified in the original grant; and for several pensions, they considered it unadvisable to make any future provision, that is, that they should be no longer paid. In their Report, dated July, 1838, the committee recommended that in the case of all future Civil List pensions, the reasons and motives of the grant should be set forth in the warrant of appointment; that in pensions granted for services to others than the individual by whom the services were rendered, care should be taken, if these pensions are granted for younger lives, that is, to the sons or daughters of the individual entitled to the pension, that no undue increase of charge should be made; and that such grants should be avoided, except under very peculiar circumstances: they recommended also that pensions for the relief of distress should be granted only on the condition of their ceasing when the circumstances of the parties no longer require their continuance; that all pensions should be held liable to deduction or suspension in the event of the parties being appointed to office in the public service; that under no circumstances should the mere combination of poverty with the hereditary rank of the peerage be considered as a justification of a grant of a pension. The committee also recommended that, in order to avoid any possible doubt or misconception hereafter, enactments should be made with respect to the Irish and Scotch revenue, analogous to those of the English act of 1 Anne.

It appears from the Report of the Committee on Pensions that the charge of pensions has been reduced as follow:—

	England.	Ireland.	Scot- land.	4½ per Cents.	Total.
	£	£	£	£	£
1782	85,000	80,000	13,300	16,700	195,000
1820	74,200	67,300	37,100	34,300	212,900
1830	74,200	53,900	33,200	24,100	185,400
1838	The lists consolidated.				140,900

Mr. Finlayson, of the National Debt Office, calculated, in 1838, the amount of saving which will be derived from the new system, assuming the ratio of decrease to continue as in the three previous years, and that the average ages of persons to whom new grants of pensions are made will be the same as heretofore:—

	Old Pension.	New Pension.	Total.
	£	£	£
1839	132,632	2,384	135,016
1844	97,540	8,077	105,617
1849	59,258	13,398	72,656
1854	30,792	18,255	49,047
1858	13,161	21,716	34,877

Mr. Finlayson was furnished by the committee with the ages of 866 persons in the receipt of pensions; and in 828 of these cases the date of the grant was ascertained. The mean age at which pensions were granted to males he found to be 32, and to females 36; and out of every 1000L payable, 257L was paid to males and 743L to females. Mr. Finlayson complains that "the females have understated their ages very considerably, and sometimes with a contempt of all probability, more than one lady having set down her age at 39, forgetting that she has been forty-five years in receipt of the pension, and this from an aversion to own the age of 40."

The following is an account of the total amount of pensions granted in each year, ending the 20th day of June, from 1829 to 1837 inclusive; soon after which period the act 1 Vict. c. 2, came into operation, and the power of granting pensions was restricted. [CIVIL LIST.]

1829	£1830	1834	£2878
1830	6353	1835	2748
1831	5401	1836	1310
1832	2638	1837	3230
1833	900		

Besides the pensions on the Civil List, the regulation of which at different periods has been referred to above, there are vast sums annually appropriated by parliament to the payment of pensions of another description. Thus every year the sum of about 1,350,000L was voted on account of the pensioners of Chelsea Hospital; 245,000L to the out-pensioners of Greenwich; 148,900L to widows of

officers of land-forces; and in officers in each of the civil departments of the government large sums are annually paid in pensions and superannuation allowances. The half-pay to retired officers of the navy and army may also be considered in the light of a pension. In 1822 the charge on the public for pensions, superannuations, and half-pay amounted to 6,152,702*l.* (*Financial Reform*, p. 203, 4th edit.) "The operation of the superannuation, the grant of retired allowances, the naval and military pensions granted for good services, the pensions granted by the 37 George III. c. 65, for persons who have occupied high political offices, and the pensions for diplomatic and consular services, have to a great extent superseded one of the original purposes of the Pension List. These acts have also substituted a strictly defined and regulated system of reward, for a system which depended on the arbitrary selection of the crown or the recommendation of the existing government, exposed to the bias of party or personal considerations." (*Report on Pensions*, No. 216, Sess. 1838.) Sir Henry Parrell, in chapter xii. of his '*Financial Reform*,' shows that there are many abuses to be remedied in reference especially to superannuations. "Nothing (he says) can be more extravagant and inconsistent with a proper guardianship of the public purse than the system of salaries and superannuations now in operation. The salaries are so much higher than they ought to be, that every officer and clerk has sufficient means of making a provision for infirmity and old age. But notwithstanding this fact, as to the sufficiency of salary, in the true spirit of profusion, a great superannuation allowance has been added." In 1830 there were nearly one thousand officers in the public service, with salaries of 1000*l.* a year and upwards, enjoying amongst them 2,066,374*l.*; and of these there were 216 persons whose salaries averaged 4400*l.*; and yet from the passing of the Superannuation Act in 1810 till 1830, the charge for civil superannuation was increased from 94,550*l.* to 480,081*l.* It was stated in the Third Report of the Finance Committee (Sess. 1835), that in not a few cases persons

obtained superannuations, as unfit for the public service, who enjoyed health and strength long afterwards, and discharged the active duties of life in private business. In 1831 the treasury established some very important restrictions relative to superannuation allowances, which are given in a Parliamentary Paper (No. 190, 2nd Session, 1831).

For an account of pensions under the French monarchy the reader may refer to the *Encyclopédie Méthodique* (section 'Finances').

PERJURY (from the Latin *perjurium*), by the common law of England, is the offence of falsely swearing to facts in a judicial proceeding. To constitute this offence the party must have been lawfully sworn to speak the truth by some court, judge, or officer having competent authority to administer an oath; and, under the oath so administered, he must wilfully assert a falsehood in a judicial proceeding respecting some fact which is material to the subject of inquiry in that proceeding. In a legal sense, therefore, the term has a much narrower import than it has in its popular acceptance. A person may commit perjury by swearing that he believes a fact to be true which he knows to be false. It is immaterial whether the false statement has received credit or not, or whether any injury has been sustained by an individual in consequence of it. The offence of perjury is a Misdemeanour.

The history of this offence in the common law is entirely dependent upon the history of the trial by jury. Where perjury is mentioned by Bracton and Fleta, they exclusively allude to the offence of jurors in giving a wilfully false verdict; and as the jury appear to have been originally merely witnesses, speaking from their personal knowledge of the facts, and sworn to speak the truth, their misconduct in giving a false decision might be justly treated as perjury. [Jury.] There is no trace in the statutes or in the reported proceedings of the courts, of any penal law against perjury in witnesses, as distinguished from that of jurors, earlier than the reign of Henry VII.; the date of the introduction of the witness's oath to speak the truth, in

use at the present day, is unknown, and no form of process for securing the attendance of witnesses (except where they were added to the jury) seems to have existed before the reign of Elizabeth. [JURY.] These facts tend to show that the offence of perjury has received its present definite character by the corresponding change in the functions of the jury. This change was complete in the time of Sir Edward Coke, as he defines perjury nearly in the same terms in which it is described in more modern text-books. (3 Inst., 163.)

A defendant in equity is guilty of perjury by false swearing in his answer to a plaintiff's bill. The defendant is in fact also a witness, for he is bound to answer on oath to the matter contained in the bill, and the plaintiff may read the whole or any integral portion of the defendant's answer as evidence against such defendant. In the case of an answer in equity, the offence of false swearing falls exactly within the definition given at the head of this article.

The punishments of perjury by the common law were, discretionary fine and imprisonment; the pillory, which punishment was abolished (by 1 Vict. c. 23) in 1837; and a perpetual incapacity to give evidence in courts of justice. As to the penalties for Perjury, see LAW, CRIMINAL, p. 205. There are many statutes by which oaths are required as a sanction to statements of facts under a variety of circumstances, and otherwise than in judicial proceedings; and these statutes frequently declare that false swearing in such cases shall amount to perjury, and be punishable as such. The Commissioners on Criminal Law have pointed out the objections to provisions of this kind, and have suggested a mode of rendering the law upon the subject more precise by drawing a line of distinction between false testimony in courts of justice and false swearing to facts on other occasions. See *Fifth Report*, pp. 25 and 50.

By the 5 & 6 William IV. c. 62, declarations may now be substituted for oaths in many extrajudicial proceedings. [OATH.]

PERPETUATION OF TESTI-

MONY. A party who has an interest in property, but not such an interest as enables him immediately to prosecute his claim, or a party who is in possession of property and fears that his right may at some future time be disputed, is entitled to examine witnesses in order to preserve that testimony, which may be lost by the death of such witnesses before he can prosecute his claim, or before he is called on to defend his right. This is effected by such party filing a bill in equity against such persons as are interested in disputing his claim, in which bill he prays that the testimony of his witnesses may be perpetuated. This is the only relief that the bill prays. If the prayer of the bill is granted, a commission issues to examine the witnesses, whose depositions are taken in the usual way in suits in equity. The depositions, when taken, are sealed up and retained in the custody of the court which grants the commission. When they are required to be used as evidence, they can be so used, by permission of the court, by the party who has filed his bill or those who claim under him, and they can be read by the direction of the court as evidence on a trial at law, if it is then proved that the witnesses are dead, or from any sufficient cause cannot attend. If the witnesses are living when the trial takes place, and can attend, they must be produced. A defendant to such a bill may join in the commission, and may examine witnesses under the commission, and he is entitled to use their depositions as evidence in his favour at a future trial. (1 Mer., 434.)

A bill to perpetuate testimony may be filed by any person who has a vested interest, however small, in that thing to which he lays claim. The parties, defendants to such bill, are those who have some adverse interest to the plaintiff.

PERSONALTY AND PERSONAL PROPERTY. [CHATELS.]

PETITION OF RIGHT. In the first parliament of Charles I., which met in 1626, the Commons refused to grant supplies until certain rights and privileges of the subject, which they alleged had been violated, should have been solemnly recognised by a legislative enactment. With this view they framed a petition to

in which, after reciting various rights by which their rights and privileges are recognised, they pray the king not to be compelled to make or any gift, loan, benevolence, tax, or to charge, without common consent of parliament,—that none be upon to make answer for refusal;—that freemen be imprisoned or only by the law of the land, or process of law, and not by the special command, without any;—that persons be not compelled (we soldiers and mariners into their against the laws and customs of the,—that commissions for pre- by martial law be revoked; all they pray as their rights and according to the laws and customs main."

This petition the king at first sent this answer: "The king will not be done according to the laws customs of the realm, and that the be put in due execution, that his to may have no cause to complain wrongs or oppressions contrary to just rights and liberties, to the persons whereof he holds himself in duty obliged as of his own prerogative." This answer being rejected as satisfactory, the king at last pronounced such words of unqualified assent, rights be done as it is desired." (c. 1. c. 1.) Notwithstanding this, or the ministers of the crown caused edition to be printed and circulated the first insufficient answer.

THE SERJEANTY. [SERJEANT.] W. The word pew seldom occurs laws upon ecclesiastical law, who invariably use the expression seat."

There were no pews in churches until the period of the Reformation, prior which the seats were moveable, such as benches, as we see at this is the Roman Catholic churches on Continent. Before that time no cases be found of claims to pews, although common-law books two or three are mentioned to seats in a church, singular parts of a seat, which were moveable benches or forms.

By the general law and of common

right," Sir John Nicholl observed (in Fuller v. Lane, 2 Add. Eocl. Rep., 413), "all the pews in a parish church are the common property of the parish; they are for the use in common of the parishioners, who are all entitled to be seated orderly and conveniently as best to provide for the accommodation of all." The right of appointing what persons shall sit in each seat belongs to the ordinary (3 Inst., 304); and the churchwardens, who are the officers of the ordinary, are to place the parishioners according to their rank and station; but they are subject to his control if any complaint should be made against them. (Peterson v. Bridger, 1 Phill., 323.) A parishioner has a right to a seat in the church without any payment for it, and if he has cause of complaint in this respect against the churchwardens, he may cite them in the ecclesiastical court to show cause why they have not seated him properly; and if there be persons occupying pews who are not inhabitants of the parish, they ought to be displaced in order to make room for him. This general right however of the churchwardens as the officers of the ordinary is subject to certain exceptions, for private rights to pews may be sustained upon the ground of a faculty, or of prescription, which presumes a faculty.

The right by faculty arises where the ordinary or his predecessor has granted a licence or faculty appropriating certain pews to individuals. Faculties have varied in their form; sometimes the appropriation has been to a person and his family "as long as they continue inhabitants of a certain house in the parish;" the more modern form is to a town and his family "as long as they continue inhabitants of the parish" generally. The first of these is perhaps the least exceptionable form. (Sir J. Nicholl, 2 Add., 416.)

Where a faculty exists, the ordinary cannot again interfere; it has however been laid down in the ecclesiastical court that where a party claiming by faculty ceases to be a parishioner, his right is determined. Sir John Nicholl states, "Whenever the occupant of a pew in the body of the church ceases to be a pe-

rishioner, his right to the pew, howsoever founded, and how valid soever during his continuance in the parish, at once ceases." (Fuller v. Lane, 2 Add., 427.) The same doctrine has been sanctioned by the Court of King's Bench. (Byerley v. Windus, 5 Barn. and Cress., 18.) But in a case in the Court of Exchequer, chief-baron Macdonald was of a different opinion. The question there was whether there could be in law a prescription for a person living out of the parish to have a pew in the body of the church, and it was held that there might (Lousley v. Hayward, 1 Y. and L., 583). As prescription presumes a faculty, these opinions seem to be at variance. Where a claim to a pew is made by prescription as annexed to a house, the question must be tried at law. The courts of common law in such cases exercise jurisdiction on the ground of the pew being an easement to the house (Mainwaring v. Giles, 5 Barn. and Ald., 361); and if the ecclesiastical courts proceed to try such prescription, a prohibition would issue. In order to support a claim by prescription, occupancy must be proved, and also repair of the pew by the party, if any has been required. (Pettman v. Bridger, 1 Phill., 325; Rogers v. Brooks, 1 T. R., 431; Griffith v. Matthews, 5 T. R., 297.) The above observations apply to pews in the body of the church. With respect to seats in the chancel, it is stated in the Report of the Ecclesiastical Commission, page 49, "the law has not been settled with equal certainty, and great inconvenience has been experienced from the doubts continued to be entertained. Some are of opinion that the churchwardens have no authority over pews in the chancel. Again, it has been said that the rector, whether spiritual or lay, has in the first instance at least a right to dispose of the seats; claims have also been set up on behalf of the vicar; the extent of the ordinary's authority to remedy any undue arrangement with regard to such pews has been questioned." (Gibson, 226; 3 Inst., 202; 1 Brown and Goul., Rep., 4; Griffith v. Matthews, 5 T. R., 298; Clifford v. Wicks, 1 B. and Ad., 498; Morgan v. Curtis, 3 Man. and Ry., 389; Rich v. Bushnell, 4 Hagg., Ecc. Rep., 164.)

With regard to aisles or isles (wings) in a church, the case is different. The whole isle or particular seats in it may be claimed as appurtenant to an ancient mansion or dwelling-house, for the use of the occupiers of which the aisle is presumed to have been originally built. In order to complete this exclusive right it is necessary that it should have existed immemorially, and that the owners of the mansion in respect of which it is claimed should from time to time have borne the expense of repairing that which they claim as having been set up by their predecessors. (3 Inst., 202.)

The purchasing or renting of pews in churches is contrary to the general ecclesiastical law. (Walter v. Gunner and Drury, 1 Hagg., Consist. Rep., 314, and the cases referred to in the note, p. 318; Hawkins and Coleman v. Compeigne, 3 Phill., 16.)

Pew-rents, under the church-building acts, are exceptions to the general law; and where rents are taken in populous places, they are sanctioned by special acts of parliament. Pew-rents in private unconsecrated chapels do not fall under the same principle, such chapels being private property.

PHYSICIAN. The first class of medical practitioners in rank and legal pre-eminence is that of the physicians. They are (by statute 32 Henry VIII.) allowed to practise physic in all its branches, among which surgery is enumerated. The law therefore permits them both to prescribe and compound their medicines, and to perform operations in surgery as well as to superintend them. These privileges are also reserved to them by the statutes and charters relating to the surgeons and the apothecaries. Yet custom has distinguished the classes of the profession. The practice of the physician is universally understood, as well by their college as the public, to be properly confined to the prescribing of medicines, which are to be compounded by the apothecaries; and in so far superintending the proceedings of the surgeon as to aid his operations by prescribing what is necessary to the general health of the patient, and for the purpose of counteracting any internal disease. It would be

impossible to enumerate here the legal qualifications required by all the different European universities; it will therefore be sufficient to mention those recognised in the British dominions.

In the university of Oxford, for the degree of Bachelor of Medicine, it is necessary that the candidate should have completed twenty-eight terms from the day of matriculation; that he should have gone through the two examinations required for the degree of bachelor of arts; that he should have spent at least three years in the study of his profession; and that he should be examined by the Regius Professor of medicine and two other examiners of the degree of M.D. in the theory and practice of medicine, anatomy, physiology, and pathology; in materia medica, as well as chemistry and botany, so far as they illustrate the science of medicine; and in two at least of the following ancient medical writers, viz. Hippocrates, Celsus, Aretæus, and Galen. After taking the degree of Bachelor of Medicine, a licence to practise is delivered to the candidate, under the common seal of the university.

For the degree of Doctor of Medicine, the candidate is required to have completed forty terms from the day of matriculation; and to recite publicly in the schools a dissertation upon some subject, to be approved by the Regius Professor, to whom a copy of it is afterwards to be presented.

At Cambridge a student, before he can proceed to the degree of Bachelor of Medicine, must have entered on his sixth year, have resided nine terms, and have passed the previous examination: the necessary certificates, &c. are much the same as those required at Oxford. A Doctor of Medicine must be of five years' standing from the degree of M.B.

Since the university of London has been chartered, in 1837, the degrees of Bachelor and Doctor of Medicine, among others, have been conferred there. The regulations under which these degrees are conferred are printed in the London University Calendar for 1843.

In Scotland the degree of doctor of medicine is conferred by the universities of Edinburgh, Glasgow, Aber-

deen, and St. Andrews, from which last-named university a diploma can still be obtained without residence; the regulations at the others contain nothing particularly worthy of notice.

In Ireland the King and Queen's College of Physicians exercise much the same authority as the English college. The degrees of Bachelor and Doctor of Medicine conferred by Trinity College, Dublin, rank with the same degrees respectively from Oxford and Cambridge, and are never given without previous study in arts, which occupies four years. For the degree of M.D. five years must have elapsed since the degree of M.B. was conferred; the candidate is then to undergo a second examination, and write and publish a Latin thesis on some medical subject.

By the English law a physician is exempted from serving on juries, from serving various offices, and from bearing arms. He is (according to Willcock, p. 105) responsible for want of skill or attention, and is liable to make compensation in pecuniary damages (as far as such can be deemed a compensation) to any of his patients who may have suffered injury by any gross want of professional knowledge on his part.

In England physicians were once sometimes rewarded by the grant of church livings, prebendaries, and deaneries; and the names of some are preserved who were made bishops. The fee of a physician is honorary, and it cannot be recovered by an action at law; and every person professing to act as a physician is precluded from assuming a different character, as that of a surgeon or apothecary, for the purpose of recovering his fees, although he may in fact be a surgeon or apothecary, or a person who had no right to practise as a physician. It has likewise been determined that a custom in the defendant's neighbourhood to pay physicians at a certain rate is immaterial, and gives them no greater right to bring the action than in places where no such custom is known. (Willcock, p. 3.) A physician however of great eminence may be considered reasonably entitled to a larger recompense than one who has not equal practice, after

it has become publicly understood that he expects a larger fee; inasmuch as the party applying to him must be taken to have employed him with a knowledge of this circumstance. (*Ibid.*)

PHYSICIANS, ROYAL COLLEGE OF, was founded through the instrumentality of Linacre, who obtained, by his interest with Cardinal Wolsey, letters patent from Henry VIII., dated in the year 1518. This charter granted to John Chambre, Thomas Linacre, Ferdinand de Victoria, Nicholas Halsewell, John Francis and Robert Yaxley, that they, and all men of the same faculty of and in the city of London, should be in fact and name one body and perpetual community or college; and that the same community or college might yearly and for ever elect and make some prudent man of that community expert in the faculty of medicine, president of the same college or community, to supervise, observe, and govern for that year the said college or community, and all men of the same faculty, and their affairs, and also that the president and college of the same community might elect four every year, who should have the supervision and scrutiny, &c. of all physicians within the precinct of London. The statute (14 Henry VIII.) confirmed this charter, and further ordained, that the six persons above named, choosing to themselves two more of the said commonalty, should from henceforth be called and cleaped elects; and that the same elects should yearly choose one of them to be president of the said commonalty; and then provided for the election of others to supply the rooms and places of such elects as should in future be void by death or otherwise, which was to be made by the survivors of the same elects. The statute (32 Henry VIII.) provides that from thenceforth the President, Commons, and Fellows might yearly, at such time as they should think fit, elect and choose four persons of the said Commons and Fellows, of the best learned, wisest, and most discreet, such as they should think convenient, and have experience in the faculty of physic, to search and examine apothecaries' wares, &c. This last appointment is independent of the constitution of the body, the persons so ap-

pointed being officers for a special purpose; and it has been usual to select for this office the same four persons in whom the government of the physicians is reposed by the charter and statute of the 14th of that king.

The constituted officers then of this corporation are the eight elects, of whom one is to be president, and four governors, who have generally borne the name of censors. There is nothing to be gathered from the charter or statutes in any way tending to exclude any of the elects, except the president, from the office of censor; and as no duties are assigned to the elects, except those of filling up their own number, electing one of themselves to be president, and granting testimonials to country practitioners, they may be rather regarded as candidates for the office of president than as active officers of the corporation. The college is bound to choose four censors, for the purpose of discharging the duties confided in it, which are to be executed by these officers. It is also incumbent on the elects to preserve their number, so that there may at no time be less than five, including the president, as they would not, after a further reduction, be capable either of electing a president or choosing others to fill the vacancies in their own body. (Willcock, *On the Laws of the Medical Profession*, p. 32.) It is evident that the charter so far incorporated all persons of the same faculty, of and near London, that every person on the 23rd of September in the 10th year of the reign of Henry VIII. falling within that description, was entitled to be admitted into the association. Such of them as had availed themselves of this privilege, and others subsequently admitted, are the persons described by statute 32 Henry VIII. as 'Commons and Fellows' (quoted in Willcock, p. 13). But as to the persons who should afterwards enjoy that distinction, the original charter and all subsequent statutes are silent. James I. and Charles II. granted charters to this body. The first is silent as to the mode of continuing it; but the charter of Charles, after limiting the number of Fellows to forty, directed that when a vacancy should occur in that number, the remainder should elect one

of the most learned and able persons skilled and experienced in physic, then of the commonalty of members of the college. Each of these charters seems to have been granted with a view to the enactment of a bill to the same effect, as the kings respectively pledged themselves to give it the royal assent. No statute has been at any time passed in pursuance of this purpose; and it is very doubtful how far and in what manner the charters have been accepted by the college, though they have certainly been several times acted upon. (Willcock, p. 34.)

The licentiates of the college who may practise within the precincts of London and seven miles round it were (until 1836) of three orders, viz. Fellows, Candidates, and mere Licentiates. The last of these classes, generally denominated licentiates, are those who have only a licence to practise physic within the precincts above described. The second class was abolished in 1836. The first class are those who have received that licence, but whose licence also shows that they are admitted to the order of fellows. This licence has often been called a *diploma*, but as it confers no degrees, the word is not properly applied, according to its more strict signification.

The common law having given every man a right to practise in any profession or business in which he is competent, the effect of 14 Henry VIII. must be taken to be this; it has left to every man his common law right of practising in the profession of physic, as in any other profession, if competent, until has appointed the president and college to be judges of this competency. (Willcock, p. 38.) The mode of examination is wholly in the discretion of the college, which has confided the immediate direction of it to the censors. It has however also appointed that the doors of the censors' chamber shall be open to all fellows who may think proper to be present, and that they may take part in the examination, should they think fit; and that the fellows may have an opportunity of availing themselves of this right, it is appointed that all examinations shall take place at a court held at certain regular intervals. (*Ibid.*, p. 41.)

The order of Candidates was abolished

in 1836, as above stated, but there were reserved to students then in the universities of Oxford and Cambridge their *inchoate* rights.

The order of Fellows comprises those who are admitted into the fellowship, community, commonalty, or society of the college. The charter incorporated all physicians then legally practising in London, so that each of them who thought proper to accept it became *ipso facto* a member or fellow; but as all future practitioners, within the precincts of and seven miles round that city, were required to obtain the licence of the college, there soon arose two orders of the profession. The fellows attempted by various by-laws to limit their own number, but seem to have considered the licentiates as members of the college, or the commons, and themselves as forming a select body for the purpose of government. To this state of the society the statute 32 Henry VIII. seems to allude in speaking of the "commons and fellows." The charter of Charles II. expressly notices these orders as forming the body of the society, inasmuch as it directed that new fellows should be elected from among the commons of the society. (*Ibid.*, p. 44.) The by-laws that formerly existed as to the election of fellows have been repealed, and the following are the regulations published by authority of the college, by which it is now governed.

Regulations of the Royal College of Physicians of London.—The College of Physicians, having for some years past found it necessary from time to time to make alterations in the terms on which it would admit candidates to examination and license them to practise as physicians, has reason to believe that neither the character nor object of those alterations, nor even the extent of the powers with which it is invested, has been fully and properly understood.

The college therefore considers it right at this time to make public a statement of the means which it possesses within itself of conferring the rank and privileges of physician on all those who, having had the advantage of a liberal education, both general and professional, can prove their qualifications by producing

proper testimonials and submitting to adequate examinations.

Every candidate for a diploma in medicine, upon presenting himself for examination, shall produce satisfactory evidence, 1, of unimpeached moral character; 2, of having completed the twenty-sixth year of his age; and, 3, of having devoted himself for five years, at least, to the study of medicine.

The course of study thus ordered by the college comprises:—

Anatomy and physiology, the theory and practice of physic, forensic medicine, chemistry, materia medica and botany, and the principles of midwifery and surgery.

With regard to practical medicine, the college considers it essential that each candidate shall have diligently attended, for three entire years, the physicians' practice of some general hospital in Great Britain or Ireland, containing at least one hundred beds, and having a regular establishment of physicians as well as surgeons.

Candidates who have been educated abroad will be required to show that, in addition to the full course of study already specified, they have diligently attended the physicians' practice in some general hospital in this country for at least twelve months.

Candidates who have already been engaged in practice, and have attained the age of forty years, but have not passed through the complete course of study above described, may (under special circumstances to be judged of by the Censors' Board) be admitted to examination upon presenting to the censors' board such testimonials of character, general and professional, as shall be satisfactory to the college.

The first examination is in anatomy and physiology, and is understood to comprise a knowledge of such propositions in any of the physical sciences as have reference to the structure and functions of the human body.

The second examination includes all that relates to the causes and symptoms of diseases, and whatever portions of the collateral sciences may appear to belong to these subjects.

The third examination relates to the treatment of diseases, including a scientific knowledge of all the means used for that purpose.

The three examinations are held at separate meetings of the censors' board. The *ried voce* part of each is carried on in Latin, except when the board deems it expedient to put questions in English, and permits answers to be returned in the same language.

The college is desirous that all those who receive its diploma should have had such a previous education as would imply a competent knowledge of Greek, but it does not consider this indispensable if the other qualifications of the candidate prove satisfactory; it cannot however, on any account, dispense with a familiar knowledge of the Latin language, as constituting an essential part of a liberal education; at the commencement therefore of each oral examination, the candidate is called on to translate *ried voce* into Latin a passage from Hippocrates, Galen, or Aretæus; or, if he declines this, he is, at any rate, expected to construe into English a portion of the works of Celsus, or Sydenham, or some other Latin medical author.

In connection with the oral examinations, the candidate is required, on three separate days, to give written answers in English to questions on the different subjects enumerated above, and to translate in writing passages from Greek or Latin books relating to medicine.

The qualifications required for Extra-Licentiates, *i. e.* persons approved for practising physic out of the city of London and seven miles thereof, pursuant to statute 14 & 15 Henry VIII. chap. 5. sect. 3, are the same as those above stated for Licentiates or members.

Those who are approved at all the examinations receive a diploma under the common seal of the college.

The college gives no particular rules as to the details of previous education, or the places where it is to be obtained. It will be obvious however, from a reference to the character and extent of the study above described, the manner in which the examinations are conducted, and the mature age of the candidates, at

long full time for acquiring the necessary knowledge, that there will be security afforded to the public and confusion, that none but those who had a liberal and learned education remain, with the slightest hope of so to offer themselves for approval (examined) board; and as the college (that, by a faithful discharge of its duty, it can promise itself the satisfaction of thus continuing to admit into order of English physicians a body in who shall do it *honore* by their functions, both general and professional, it is prepared to regard in the light, and address by the same opinion, all who have obtained its diploma, whether they have graduated *classe* or not.

For various information respecting antiquities of the College of Physicians in so be found in 'The Golden Cause' an amusing and interesting volume by the late Dr. Macmillan, etc. on (p. 120) that its very first age immediately after its establishment, 1518, were held in the house of the, called the Stone House, No. 5, in Alder Street, which still belongs a college. About the time of the death of Charles I. the college removed to another spot, and took a house (Dean and chapter of St. Paul's, at bottom of Auen Corner. During all were their precedents were considered as part of the property of the, and sold by public auction; on a occasion Dr. Hamer became the owner, and two years afterwards, 1649, them in perpetuity to his colleagues, great Sir of London, 1656, consumed things and the whole of the library (the exception of one hundred and a folio volumes. For the next few the meetings of the fellows were usually held at the house of the president, while a new college was being on a piece of ground that had been in in Warwick Lane. This was done in four years, and was opened, not any particular ceremony, on the 15th of February, 1674, under the presidency of Sir George Ent. Here they continued to hold their meetings until a few years, when (as Dr. C. et.

Macmillan says) "the change of fashion having overcome the *geometria loci*," the present new college, at the north-west corner of Trafalgar Square, was opened on the 25th of June, 1825.

PIEPOWDER COURT [Manner.]

PILORY. The pillory was a mode of punishment for crimes by a public exposure of the offender, used for many centuries in most of the countries of Europe under various names. In France it was called *pillorie*, and in more recent times *carcan*; and in Germany, *pranger*. It was abolished in England in the year 1837, by the statute 1 Vict. c. 23.

In modern times the English pillory was a wooden frame or screen, raised several feet from the ground, and behind which the culprit stood, supported upon a platform, his head and arms being thrust through holes in the screen, so as to be exposed in front of it; and in this position he remained for a definite time, sometimes fixed by law, but usually assigned at the discretion of the judge who passed the sentence. The form of the judgment was, that the "defendant should be set in and upon the pillory." In a case which occurred in 1759, an under-sheriff of Middlesex was fined fifty pounds and imprisoned for two months by the Court of King's Bench, because, in executing the sentence upon Dr. Blackmore, who had been convicted of a political libel, he had allowed him to be attended upon the platform by a servant in livery, holding an umbrella over his head, and to stand without having his neck and arms confined in the pillory. (*Barrow's Reports*, vol. ii. p. 791.)

The public exposure of the offender as a punishment is liable to many objections, besides the inequality of its operation; and the efficacy of all punishments which merely disgrace the offender, has been questioned by some of the most distinguished modern writers on criminal law. (Rouss, *Traité de Droit Pénal*, p. 482; Haas, *Projet de Code Pénal Belge*, vol. i. p. 143.) In consequence of the recent direction of public opinion to this subject, punishment of this kind have been lately expunged from most of the modern systems of penal

law in Europe. In England the pillory was abolished in 1837, by the statute above referred to; in France, the carcan was discontinued upon the revision of the Code Pénal in 1832; and in the numerous codes and schemes of codes which have appeared in the different states of Germany during the present century, punishments by public exposure of the person or otherwise tending generally to degrade the character have been omitted. (*Entwürfe für Württemberg, Sachsen, Hannover, Baden, &c.*) It is remarkable that the Bavarian code of 1813, which is generally founded on just and enlightened principles of criminal law, and which formed the commencement of the series of improvements which have since taken place in Germany, contains the objectionable provision that a criminal capitally convicted shall, in certain aggravated cases, undergo a public exposure on the *pranger* for half an hour, previously to his execution. (*Strafgesetzbuch für Baiern*, art. 6.)

PILOT. [SHIPS: TRINITY HOUSE.]

PIOUS USES. [USE, CHARITABLE.]

PIPE-OFFICE, or more properly the Office of the Clerk of the Pipe, a very ancient office in the court of Exchequer. It was formerly at Westminster, but was removed to Somerset House towards the close of the last century, where the duties of the office were performed, and where the records belonging to it were kept, till the abolition of the office of clerk of the pipe, and with it that of the comptroller of the pipe, by the act 3 & 4 William IV. c. 99. By that act the records which had been accumulated in the performance of the duties of this office were transferred to the custody of the king's remembrancer of the exchequer.

The business of the office had been much reduced by an act of 52 George III., which transferred the management of portions of the land revenue of the crown to the office of woods and forests, and by acts of 1 & 2 George IV. c. 121, and 3 Geo. IV. c. 88, which transferred the duty of recording what were called the foreign accounts, or those of supplies granted by parliament, to the audit and tax offices.

Still in this office was made up year the record called the great the pipe, or more correctly the gr of the exchequer, in which was the revenue accruing to the crown different counties of the realm, charging and discharging the and other accountants. Of this deputy clerk of the pipe gives the ing account in reply to the questions of the Commissioners. Public Records in 1832:—"The revenues here recorded were certain or casual. The certain consisted of farms, fee farms, guard rents, and other rents of kinds; the casual part was comp fines, issues, amercements, recogn profits of lands and tenements, go chattels received into the hands crown on process of extents, od diem clausit extremum, and othe and process; wards, marriages, suits, seignories, felons' goods, de and other profits casually arising crown by virtue of its prerog (*Report of Commissioners of Pub cords*, 1837, p. 198.)

Of these annual rolls there is commencing in the second year of Henry II., in the year of our Lord and continued to the breaking up office in 1834. It is justly spoken Madox, the author of 'The I of the Exchequer,' as "a stately record," and it is said no country in Europe possesses record that can be compared w Two only of these rolls have let It approaches, as we see, in antiq about seventy years from the date preparation of the great sur England by the Conqueror, kn the name of 'Domestay Booc abounds with valuable notices persons who are distinguished in history through the whole of this and of the transactions of the ti corded in every instance by temporary hand.

There is one roll of a still earli which has evidently been saved b fortunate chance when the other the same reign perished. It w merly thought to be the roll of

but the antiquaries of the country, on an imperfect contents, determined that in the fifth year of King accordingly it has been re- the office as a roll of that as the roll of the 5th of has been repeatedly quoted writers, and especially by his "History of the Statutes," and who, in numerous as referred facts mentioned fifth year in the reign of index also often quotes it as the 5th of Stephen, though ugh in it to lead him to er- sign of Henry I. This roll ned and published by the late on the Public Records, ner, one of the sub-con- prefixed to it a disquisition to which it belongs, in which on that it is the roll of the ear of the reign of King us carrying it back into the e of the sons of the Com- which scarcely any intimal ge this has descended, and once all the great historical icks have arisen from re- the reign of his successor

missioners on the Public e printed other portions of ppe rolls, but the volumes n completed.

o great roll, there was a prepared by the comptroller, which has been called the roll. This series is far less an the other; and as it ightly from the great roll, ver examined, and as it ertain that access should be to it than could be the case ined in the custody of the exchequer, the late Commis- the Public Records directed it to the British Museum. some of Pipe applied to this e the great roll of the ex- conjecture is, that the rolls ed because in form they re- g, another that they were ough a certain pipe from

one room of the exchequer to another. It may be considered an undecided question.

PIRACY, PIRATE (immediately from the Latin *pirata*, and remotely from the Greek *ῥεῦμα*, which had the same signification as our word *pirate*).

The offence of piracy, by the common law of England, consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there. (4 Black., 72.)

By statute some other offences are made piracy, as by stat. 11 & 12 Wm. III. c. 7, if any natural-born subject commits any act of hostility upon the high seas against others of his majesty's subjects, under colour of a commission from any foreign power, or if any commander or other sea-faring person shall betray his trust, and run away with any ship, boat, ordnance, ammunition, or goods; or if he yields them up voluntarily to a pirate, or conspires to do these acts; or if any person assaults the commander of a vessel to hinder him from fighting in defence of his ship, or ordnance him, or makes or endeavours to make a revolt on board, he shall for each of these offences be adjudged a pirate. The commanders or seamen wounded, and the widows of such seamen as are slain, in an engagement with pirates, are entitled to a bounty not exceeding one-fifth part of the value of the cargo on board, which is to be equally divided; and seamen who are wounded are entitled to a pension from Greenwich Hospital.

By the stat. 8 Geo. I. c. 24, the trading with known pirates, or furnishing them with stores or ammunition, or fitting out any vessel for that purpose, or in anywise consulting, combining, confederating, or corresponding with them; or the forcibly boarding any merchant vessel, though without seizing or carrying her off, and destroying or throwing any of the goods overboard, shall be deemed piracy. (4 Blacks., 72, 269; and Abbott, *On Shipping*, 140, 141, 142, 235.) The dealing in slaves on the high seas is piracy, and subjects a person to transportation for life or not less than fifteen years, or to be imprisoned for not exceeding three years.

(5 Geo. IV. c. 113; 1 Vict. c. 91.) The 6 Geo. IV. c. 49, for encouraging the capture of piratical vessels, provides that officers, seamen, marines, and others, actually on board any king's ship at the taking or destroying any piratical vessel, shall receive the sum of 20*l.* for each pirate taken or killed during the attack, and the sum of 5*l.* for every other man of the crew, not taken or killed, who shall have been alive on board the pirate ship at the beginning of the engagement.

Persons guilty of piracy were formerly tried before the judge of the Admiralty court, but the stat. 28 Henry VIII. c. 15, enacted that the trial should be before commissioners of oyer and terminer, and that the course of the proceedings should be according to the law of the land. Further provision was made with respect to the trial of offences on the high seas by the statutes 39 Geo. III. c. 15; 43 Geo. III. c. 113; 46 Geo. III. c. 54; and now, by the stat. 4 & 5 Wm. IV. c. 36, § 22, the trial of offences committed on the high seas is in the Central Criminal Court. Piracy is in some cases punished with death, in others by transportation. [LAW, CRIMINAL, p. 189, 190.]

PIRATE. [PIRACY.]

PIX, TRIAL OF THE. [MINT.]

PLEBEIANS. [AGRIARIAN LAWS.]

PLEDGE is a thing bailed (delivered for a temporary purpose) as a security to the bailee (receiver), for the performance of some engagement on the part of the bailor (the deliverer). When the pledge is for a debt, more especially where it is given to secure a loan at interest, it is commonly called a pawn. [PAWN-MOKEK.] In bailments the degree of care required from the bailee varies according to circumstances. When the bailment is for the sole benefit of the bailee, he is bound to use the greatest care, and is excused by nothing but unavoidable accident or irresistible force. When the bailment is for the mutual benefit of bailor and bailee, the bailee is bound to take the same care of the thing bailed as a prudent man usually does of his own. When the bailment is for the

sole benefit of the bailor, the bailee is bound to keep the goods bailed as carefully as he does his own, however negligent he may be. Different writers on the law of bailments refer the contract of pledge to each of these divisions. Perhaps the conflicting opinions may, to a certain extent, be reconciled by distinguishing between the different objects which the pledge is intended to secure, and the engagements which it is intended to protect. First, the pledge is sometimes, though rarely, given for the sole benefit of the pledgee, as where, after a contract is completely made, one party gives to the other a pledge for its performance. Secondly, which is the ordinary case, the pledge may be for the mutual benefit of bailor and bailee, as in the case of a loan of goods on hire, or of money at interest, accompanied by a pawn, in which case the pawn gives security to the bailee and purchases credit for the bailor. Thirdly, the pledge may be given for the purpose of obtaining a gratuitous loan of goods or of money, or of procuring some other advantage to the bailor only. It would appear that in the first of these three cases the bailee would be liable for the consequences of slight negligence; in the second, for the consequence of the want of ordinary care; and in the third, for gross negligence only.

The pledgee is bound to return the pledge and its increments, if any, upon being requested so to do, after the performance of the engagement. This duty is extinguished if the pledge has ceased to exist by some cause for which the pledgee is not answerable. But he is responsible for all losses and accidents which happen after he has done anything inconsistent with his duty as pledgee, or has refused to do his duty. When the full amount of the debt or duty therefore is tendered and refused, and the pledge is detained, the pledgee is at the sole risk of the pledgee: it is as if the pledgee misused the pledge. In every case where the pledge has sustained injury from the wrongful act or default of the pledgee, the owner may recover damages to the amount of the injury, in an action on the case. By the act of pledging, the pledger implicitly warrants

equity in his own, and such as finally glides.

By the performance of the act at which the glide was by satisfying the engagement or promise, either in fact or by act of law, as by the acceptance of security without an express (that the glide shall continue, engagement, no power which is given, he not performed is signified done, the glide is then giving due notice to the act as not is signified, the act give notice that he requires fulfillment of the engagement, compliance with which he may

continue of the glide does not right of the glide to continue of the engagement, unless a special agreement, by which given to meet in the glide or both or it in the first instance, the glide may sell, he continues the glide to himself (definit of the glide); and is by to use it without the power of the owner, expressed or implied. Such an implication are the words is of a power to let by or to require being used, better case the use is not only, but indispensable to the deed the duty of the glide, under the Law of Hedmon, by

the power of an agent to glide, as : and as to the making (and to do, as *decurator*.

§22. (Roman). The English law divided a person who was for another; but is now divided both is a security, and generally is.

and under of English law as to up and gliding are divided Roman law, in which, however, no distinction among glides, is in the nature of the thing whether it was a thing movable, immovable, corporeal or incorporeal, and a thing could not be the glide unless it could be the

subject of buying and selling, for the power of selling a glide was an important part of the creditor's security. A man might glide a thing either for his own or another person's debt. The terms used in the Roman law to express gliding, and also the thing, glided, are *Pignus* and *Hypotheca*. It is properly hypotheca, where there is a bare agreement (such contract) that a thing shall be a security to a creditor for a debt, and the thing remains in the possession of the debtor. The word hypotheca (*hypotheca*) is Greek, and denotes a thing subjected to a claim or demand. When the thing was delivered to the creditor, it was called *Pignus* (Lat., *Orig.* v. 2. 22); and as movable things could, for obvious reasons, be more frequently delivered, a action got established among some Roman lawyers, aided by an ancient story (pignus hypotheca a pignus, *Orig.* ib. et. 14. 2. 217), that the term pignus was applicable only to a glide of movable things, and this action has also prevailed in modern times. (*Byall* 2. Rowles, 1 Ves.) The true story of pignus seems to be the same as that of pignus. It is generally said that hypotheca corresponds to the English mortgage, and pignus to pignus or glide; but this is not the case. The ownership was transferred by the Roman hypotheca. The term hypotheca in English law is still used to express the mortgage of a ship or its cargo.

Originally, when a man wished to borrow money on the security of a thing, he transferred the ownership of the thing to the lender by mancipia, or in few cases, and large remission, or in still distant; and the borrower could recover his ownership by mancipia (*Orig.* 2. 21. 22). when the debt was paid, and in some other cases also. But the mode of giving security was found to be disadvantageous to the debtor, and subsequently the thing was merely put into the hands of the creditor with a power of sale in case the debt was not paid according to the agreement; but this gave the creditor an ownership, and consequently he had an action in rem against any third person, and therefore an additional security for his debt. The power's effect took a

(5 Geo. IV. c. 113; 1 Vict. c. 91.) The 6 Geo. IV. c. 49, for encouraging the capture of piratical vessels, provides that officers, seamen, marines, and others, actually on board any king's ship at the taking or destroying any piratical vessel, shall receive the sum of 20*l.* for each pirate taken or killed during the attack, and the sum of 5*l.* for every other man of the crew, not taken or killed, who shall have been alive on board the pirate ship at the beginning of the engagement.

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the bailee keep the goods bailed as carefully as he does his own, however negligent he may be. Different writers on the law of bailments refer the contract of pledge to each of these divisions. Perhaps the conflicting opinions may, to a certain extent, be reconciled by distinguishing between the different objects which the pledge is intended to secure, and the engagements which it is intended to protect. First, the pledge is sometimes, though rarely, given for the sole benefit of the pledgee, as where, after a contract is completely made, one party gives to the other a pledge for its performance. Secondly, which is the ordinary case, the pledge may be for the mutual benefit of bailor and bailee, as in the case of a loan of goods on hire, or of money at interest, accompanied by a pawn, in which case the pawn gives security to the bailee and purchases credit for the bailor. Thirdly, the pledge may be given for the purpose of obtaining a gratuitous loan of goods or of money, or of procuring some other advantage to the bailor only. It would appear that in the first of these three cases the bailee would be liable for the consequences of slight negligence; in the second, for the consequence of the want of ordinary care; and in the third, for gross negligence only.

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the property is his own, and such as is rightfully pledge.

An contract of pledge may be executed by the performance of the payment for which the pledge was, or by satisfying the engagement in other manner, either in fact or by action of law, as by the acceptance of other security without an express intention that the pledge shall continue.

The engagement, to protect which pledge is given, is not performed at the stipulated time, the pledgor will, upon giving due notice to the creditor, if no time be stipulated, then may give notice that he requires fulfilment of the engagement, notwithstanding which he may

in possession of the pledge does not have the right of the pledgor to enforce compliance of the engagement, unless there is a special agreement, by which he engaged to resort to the pledge, or to look to it in the first instance. Though the pledgor may sell, he cannot appropriate the pledge to himself, to the defeat of the pledgor; nor is it liberty to use it without the permission of the owner, expressed or by implication. Such an implication is where the article is of a nature to be used by or to require being used, such latter case the use is not only lawful, but indispensable to the discharge of the duty of the pledgor. *Commentaries on Law of Bailment*, by W.

as to the power of an agent to pledge, *Farren*; and as to the making land security for debt, see *MONTAGUE*.

PLEDGE (Roman). The English formerly denoted a person who was surety for another; but it now denotes any which is a security, and generally a debt.

The chief rules of English law as to pawning and pledging are derived from the Roman law, in which, however, there is no distinction among pledges, dependent on the nature of the thing pledged, whether it was a thing moveable or immovable, corporeal or incorporeal; and a thing could not be the subject of pledge unless it could be the

subject of buying and selling, for the power of selling a pledge was an important part of the creditor's security. A man might pledge a thing either for his own or another person's debt. The terms used in the Roman law to express pledging, and also the thing pledged, are *Pignus* and *Hypotheca*. It is properly *hypotheca*, where there is a bare agreement (*nuda conventio*) that a thing shall be a security to a creditor for a debt, and the thing remains in the possession of the debtor. The word *hypotheca* (*hypothesis*) is Greek, and denotes a thing subjected to a claim or demand. When the thing was delivered to the creditor, it was called *Pignus* (*Jelf, Orig.*, 7, c. 25); and as moveable things would, for obvious reasons, be most frequently delivered, a notion got established among some Roman lawyers, aided by an absurd etymology (*pignus* appellatum a *pignus*, *Dig.*, 50, tit. 16, s. 238), that the term *pignus* was applicable only to a pledge of moveable things; and this notion has also prevailed in modern times. (*Hayll v. Rowles*, 1 Vex.) The true etymology of *pignus* seems to be the same as that of *pactum*. It is generally said that *hypotheca* corresponds to the English mortgage, and *pignus* to pawn or pledge; but this is not the case. No ownership was transferred by the Roman *hypotheca*. The term *hypothecation* in English law is still used to express the mortgage of a ship or its cargo.

Originally, when a man wished to borrow money on the security of a thing, he transferred the ownership of the thing to the lender by *manipulatio*, or in *jure cessio*, sub lege *remaneantio*, or *sub fiducia*; and the borrower could recover his ownership by *reuscriptio* (*Gaius*, ii. 59, *Ac.*) when the debt was paid, and in some other cases also. But this mode of giving security was found to be disadvantageous to the debtor, and subsequently the thing was merely put into the hands of the creditor with a power of sale in case the debt was not paid according to the agreement; but this gave the creditor no ownership, and consequently he had no action in rem against any third person, and therefore no sufficient security for his debt. The creditor's action would

remedy for this by giving to the creditor a real action, called *Serviana actio*, against any person who was in possession of the thing pledged, for the purpose of recovering it; and the extension of this right of action, under the name of the quasi-serviana actio, also called *hypothecaria*, gave to the hypotheca the full character of the *pignus*.

Thus the Roman law recognised the *pignus*, which arose from the *contractus pignoris*, and the *hypotheca*, which arose from the *pactum hypothecæ*. But there were other cases which in the Roman law were considered cases of *pignus*.

The *pignus pratorium* arose when a creditor, by a judicial decree, was allowed to enter into possession (*mittebatur in possessionem*) either of the whole property of a debtor or any part of it; but there was no *pignus* till the creditor took possession. It has been conjectured that this kind of *pignus* owes its origin to the old *pignoris capio*. (Gains, iv. 26, &c.)

There was also the *tacit hypotheca*, which was founded on certain acts. In the case of *prædia rustica*, the fruits of the ground were a *pignus* to the owner for the rent, even if there was no agreement to that effect, which is a case of the Scotch law of hypothec; and if a man lent money for the repairs of a house, the building became a *pignus* for the debt.

The creditor, though in possession of the pledge, could not use it or take the profits of it without a contract to that effect, which was called *antichresis*, or *mutual use*. If he took the profits, he had to render an account of them when his debtor came to a settlement with him; but he was entitled to an allowance for all necessary expenses laid out on the thing pledged, as, for instance, for the repairs of a house.

After the time agreed on for payment was passed, the creditor had the right of selling the pledge and of retaining his debt out of the produce of the sale. If the produce of the sale was not sufficient to discharge the debt, he had a personal action against the debtor for the remainder. Originally perhaps he could only have this right of sale by express contract, but subsequently the right to sell (*jus distrahendi sive vendendi*) was

an essential part of the contract of pledge. Though the creditor was not the owner of the thing (*dominus*), still he transferred ownership to the purchaser on the doctrine that is only intelligible on the supposition that he sold it as the seller or agent of the debtor. But the creditor could only sell the thing in respect of the debt for which the thing was pledged, and not in respect of other debts due to him from the debtor, though he could apparently retain the surplus of the sale in his hands as a satisfaction for other debts. The power of sale was to be exercised pursuant to the terms of the contract; and when there was no stipulation as to the form and manner of the law prescribed the mode of proceeding, which the creditor was bound to observe strictly. It was once usual to insert in the contract of pledge a *Commissoria*, that is, a condition, the virtue of which the thing pledged became the absolute property of the creditor if the money was not paid at the time agreed on. But by a constitution of Constantine (*Cod.*, viii., tit. 35) it was forbidden to insert such a clause in the contract. If anything remained due after satisfying the creditor, it belonged to the debtor.

A thing might be pledged to several persons in succession, whose claims were to be satisfied according to their priority in time. But there were some exceptions to this rule introduced by special laws which gave a preference to certain persons and claims, independent of the order of time; and the constitution of Leo gave a priority to a pledge which was created by a public instrument (*Instrumentum publicum confectum*), or by a private instrument attested by three witnesses, over every other pledge. This law was intended to prevent fraudulent agreements by which a pledge would be antedated.

When there were several creditors who had the priority over all was entitled to sell and pay himself; the surplus, belonged to the creditor who was next in order, and so on till the debt was exhausted. If a creditor who was posterior in order of time, wished

land in the place of him who had the priority, he could do so by paying him his debt, and he then occupied (successit) the same place and had the same right as his prior creditor. This doctrine was founded on the assignable character of a pledge, for though the pledgee was not the owner of the thing, and could only sell it in the manner already mentioned, he could transfer his interest to an assignee, and could even transfer to a second pledger the *ius vendendi* when the second pledger was excluded from such right by special contract. (*Dig.*, 20, tit. 3, s. 3.) When a subsequent creditor advanced a sum of money which was applied to the preservation of the thing pledged, for instance, for the purpose of repairing a ship, he had a priority over creditors of earlier date, on the ground of his having by his loan secured the thing. (*Dig.*, 20, tit. 4, s. 5.) The same rule, perhaps somewhat more limited, prevails in our own law as to money lent on the security of a ship.

As the pledger remained the owner of the thing pledged, he could of course sell it, but the purchaser took the thing subject to the pledge. The creditor who was in possession of a pledge was answerable for any damage that befel it owing to *dolus* or *culpa*, that is, fraud or neglect, but he was not answerable for unavoidable loss.

A pledge was determined in various ways; by the destruction of the thing, by the creditor releasing the debtor, by the debtor paying the debt, and in other ways. When the debtor offered the money to his creditor, he was entitled to have the pledge restored to him. This might be obtained by an *actio pignoratitia*, which was an *actio in personam*, and also lay for damages done to or sustained by the thing, or for the surplus of the money if the pledge had been sold by the creditor. The creditor had a *contraria pignoratitia actio* against the debtor for expenses incurred as to the pledge, for any fraud in the matter of the pledge, as passing off base for better metal, and in some other cases.

The Roman law of pledges has been treated by various writers at great length. A compendious view of it is contained in *Brinkmann's 'Institutiones Juris Ro-*

mani,' Breslau, 1822; in *Marezoll, 'Lehrbuch der Instit. des Röm. Rechtes,' Leipzig, 1839; Puchta, 'Cursus der Institutionen,' ii. 693, first ed., Leipzig, 1842; and in Ayliffe's 'Law of Pledges or Pawns,' London, 1792; see also 'Dig., 20, tit. 1, &c.; 13, tit. 7; 'Instit.,' iv., tit. 6; 'Cod.,' 8, tit. 14, &c.*

PLENIPOTENTIARY. [AMBASSADOR.]

PLOUGHBOLE. [COMMON, RIGHTS OF.]

POACHING. [GAME LAWS.]

POLICE is that department of government which has for its object the safety and peace of the community.

Its primary object is the prevention of crime and the pursuit of offenders; but the police system also serves other purposes, such as the suppression of mendicancy, the preservation of order in great thoroughfares, the removal of obstructions and nuisances, and the enforcing of laws which relate to the public health.

In the Anglo-Saxon period the sheriff of each county, chosen by the freeholders in the folk-mote, was the chief officer for the conservation of the peace; and in his half-yearly visitations to each hundred in the county, he inquired whether there was any relaxation in the efficiency of the means for effecting this object. The hundred originally consisted of ten divisions, each containing ten freeholders, mutually pledged to repress delinquencies within their district. All males above the age of twelve were obliged to appear at the sheriff's visitation, to state the district to which they belonged, and to be sworn to keep the peace. One out of every ten freeholders had precedence of his companions, and the whole were bound to bring delinquents to justice within thirty days on pain of being themselves liable to penalties. The population was thinly scattered; every man was known to his neighbours; and no man could depart from his dwelling without the consent of his fellow-pledges; and the consent of the sheriff was necessary to enable a man legally to go out of his own county. No man could enter a neighbourhood without being recognised as a stranger; and if there was any suspicion, a hue and cry was raised if the

stranger could give no good account of himself. [HUE AND CRY.]

After the Conquest, the advantages of the system were recognised by several of the Norman kings, particularly by William I., and by Henry I. in the early part of his reign. William I. ordered that every freeman should be under pledges, and Henry I. that views of frank-pledge should be taken in order that none might escape responsibility. But a great innovation was made in the Anglo-Saxon system, when the sheriff, instead of being elected by the freeholders, was appointed directly by the king; and the sheriff's "tourn," or half-yearly visitation, was soon neglected.

When Henry I. instituted the office of justices-itinerant, the functions of the sheriff became of still less importance. By the stat. Merton, c. 10, passed 20th Henry III. (1236), freemen who owed suit to the county or hundred court were allowed to appear by attorney. The stat. Marl., c. 10, c. 24, passed in the 52 Henry III. (1264), dispensed with the attendance of the baronage and clergy at the sheriff's court unless their attendance was specially required; and it also prohibited the justices-itinerant from amercing townships on account of persons above the age of twelve years not having been sworn in pledges for keeping the peace. By these various measures the ancient system was greatly impaired; and the new laws which were introduced from time to time for the purpose of repressing crime do not seem to have been very successful. In 1277, nine years after the passing of the statute of Marlborough, the absence of "quick and fresh pursuit" of felons is noticed as an evil which was increasing. To supply the energy and alacrity of the old system, fines and penalties were imposed by the stat. Westminster, prim., 3 Edward I., sec. 9, on all who neglected to pursue offenders. The statute directs that "all generally be ready and appparelled at the commandment and summons of the sheriffs, and at the cry of the county to pursue and arrest any felous when any need is." The statute of Winchester, 13 Edward I. (1285), endeavoured to maintain the spirit of the Anglo-Saxon laws

by making the county or hundred responsible in case of a delinquent not being forthcoming, and the duty of apprehending him was cast upon all the king's subjects. This statute also regulated the office of constable, an officer who had succeeded the Anglo-Saxon hundred or tything man. [CONSTABLE.] The prevention of crime, as well as the pursuit of criminals, was also one of the primary duties of constables, and they were charged to make presentment at the assizes, sessions of the peace or leet, of all blood-sheddings, affrays, outeries, rescues, and other offences against the peace. The justices to whom these presentments were made in the first instance, reported directly to the justices-itinerant, or at once to the king or his privy-council; and the supreme executive made provision accordingly. At the same time the responsibility cast upon the hundred quickened the vigilance of the inhabitants; and this responsibility extended to individuals in many cases. The following extracts from the Year-Books of the Exchequer are instances of this: "15 Edward I., Sussex: murder and robbery—township of Tyndon amerced, because it happened by day, and they did not take the offender." "6 Edward II., Kent: manslaughter (upon a sudden quarrel) committed in the highway of Wrotham—three bystanders amerced because they were present when the aforesaid Robert killed the aforesaid John, and did not take him." And in the reign of Elizabeth the popular vigilance which this system had created leads a writer of that day to remark that "every Englishman is a serjeant to take the thief, and who sheweth negligence therein do not only incur evil opinion therefore, but hardly shall escape punishment."

Instead of being almost entirely engaged in agriculture, as in the Anglo-Saxon period, and for several centuries after the Norman conquest, the population is now occupied in great diversity of employments. Persons so engaged, and the more numerous class who live by manual labour, cannot now follow up the "quick and fresh pursuit" of felons, at the cry of the hundred or county; such a duty is incompatible with their ordinary

in. A permit at the tail of the "would not be quite sufficient: neither may have committed a robbery. Lascivious in the evening, and seated in the metropolis by the morning. As a consequence of various changes, it has not been so to render the hundred responsible a delinquency committed within the, and the subordinate being now, in a few cases (7 & 8 Geo. IV, c. 106) from such responsibility, they were respecting either the prevention of crime or the apprehension of criminals. While the disposition of the law did the public force in those was gradually diminishing, the of the constables became much complicated, and required the whole time. The same necessity which induced a standing army, instead of one, a more useful division of element, had become equally urgent in one of those on whom devolved the of keeping the peace and watching the security of the community. It however of the constabulary being re-organised, and adapted to state of society, it was altered by 6, with greater powers, to cope with offences which demanded increased care, activity, and intelligence. Office of constable remained still a appointment, and one so often, that persons were thrust into it were incapable of executing the. Under the most favourable circumstances, the loss of time and the remuneration offered no inducement to exertion; and if the duties were mixed with something like energy, a farmer or small tradesman during use of office, they were performed with risk of injuring their private interests. A power so constituted cannot fully prevent crime; and it is inefficient for the purposes of and punishment. The parish into usually acts only when called by some private party, and the use of the constabulary force are confined occasionally, when any we become so extensive as to excite complaint, and then the absence of regulations and rules of discipline

renders their services of comparatively little value. In the manufacturing districts when any disturbance is apprehended, such a force is useless, and the practice is either to erect in a large number of special constables, or to call in the aid of the military power. The special constables are deficient in the necessary discipline, and they are as timid in the performance of their duties as they are unwilling to undertake them. The appearance of controlling a district by military force is an evil which, under present circumstances, cannot always be avoided. The want of confidence in the old police force is also attested by the existence of numerous voluntary associations for the apprehension and prosecution of felons: their funds are expended in the prosecution of criminals, rather than in the prevention of crime. Some of these associations have rules which limit the members, as in the case of horse-stealing, to take horse and join in pursuit of the thief. Railway Acts bind the companies to maintain a police during the formation of the line. An Act was passed in August, 1846 (3 & 4 Vict. c. 97), entitled "An Act to provide for keeping the peace on rivers and navigable rivers." Private watchmen are also extensively employed in docks and warehouses.

To correct the various evils incident to the constitution of the present rural constabulary, the magistrates of Cheshire, in 1829, made the first provincial attempt to improve the administration of police in their county, and they obtained an Act (10 Geo. IV, c. 97) which authorized them to appoint and direct a paid constabulary. A more successful attempt was made at Barnet by a voluntary association, which at first engaged two officers only to patrol a limited district. The plan was found so advantageous, that it was adopted in a more extensive circle. These isolated examples however render the adjacent unprotected districts in a worse state than they were before. The establishment of a new police force for the metropolis, in 1829, has done more towards exhibiting the advantages of employing a trained body of men for all the purposes for which the old constabulary was appointed, than any other measure

stance. Viewed at first with suspicion and dislike, from its somewhat military organization, the clamour with which it was assailed has died away, and public opinion is now in its favour. Each parish had formerly managed its own police affairs; and before 1829, the total police force of the metropolis consisted of 797 parochial day officers, 2785 night watch, and upwards of 100 private watchmen: including the Bow-street day and night patrol, there were about 4000 men employed in the district stretching from Brentford-bridge on the west to the river Lea on the east, and from Highgate on the north to Streatham on the south, the City of London being excluded. The management of this large force was of varied and often of conflicting character. The act of parliament which created the new police force (10 Geo. IV. c. 44) placed the control of the whole body in the hands of two commissioners, who devote their whole time to their duties: they are immediately responsible to the home secretary of state. By the 2 & 3 Victoria, c. 47, the metropolitan police district may be extended to any parish or part of a parish situated within 15 miles of Charing Cross, the first act having limited its operation to a distance of twelve miles. The number of men of each rank serving in the metropolitan police force, at the present time (March, 1846), is as follows:—1 inspecting superintendent, salary 600*l.*; 18 superintendents, of whom 15 have salaries of 250*l.* and 2 have a higher and 1 a lower salary; 114 inspectors, 88 of whom have 118*l.* 6*s.* a year; 485 sergeants, of whom 474 have 63*l.* 14*s.*; 4131 constables, those of the first class (1071) have 54*l.* 12*s.*; second class (2013) 49*l.* 8*s.*; third class (1000) have 44*l.* 4*s.* The sergeants and constables are allowed clothing, and each married man of these two ranks is allowed 40 pounds weight of coals weekly throughout the year; each single man is allowed 40 pounds weight weekly during six winter months, and 20 pounds weight weekly for the remainder of the year.

The total number of the force in 1840 was 3486, and in 1846 the number was 4749. They are formed in divisions, and each division is employed in a distinct

district. Every part of the metropolis is divided into "beats," and is watched day and night. The total disbursement account of the force, for the year amounted to 230,042*l.*, one-fourth of which is paid by the treasury out of the revenue, and the other three-fourths by the respective parishes. Since August 1845, the horse patrol, consisting of 71 men, who are employed within a distance of several miles around London, has been incorporated with the metropolitan police. The Thames police consists of 300 men, each of whom has charge of a boat when on duty, and the number of constables is 27. The establishment is under the immediate control of the magistrates of the City of London Police-office. The city of London manages its own police affairs, and has been placed under a far more efficient system since the establishment of the metropolitan police force.

The police of the metropolis is divided into fifteen miles of the City of London (exclusive of the city of London) is regulated by the Acts 10 Geo. IV. c. 44, and 2 & 3 Vict. c. 47, and they form the police code for a seventh part of the population of England and Wales.

The officers and men of the metropolitan police have been at various times engaged in other places to protect the peace when the local force has been incompetent. In nearly all the bills constituted under the Municipal Corporations Act (5 & 6 Will. IV. c. 76) a paid police force has been established as near as possible on the same footing as the metropolitan police. In the metropolis, any burglary or serious offence is reported to the knowledge of the police, the inspector or other officer of the division or subdivision where the offence occurred immediately examines the witnesses, or makes a precognition, and reports upon them and the measures taken in consequence. . . . A daily report is made to the committee of all the chief occurrences which have taken place during the preceding 24 hours in every division of the metropolis, upon which presentment instructions are given as required.

circumstances may seem to require. Upon other reports, made at such intervals as to comprehend general results, if it shall appear that in any district there has been an influx of depredators, additional strength is directed upon it, or explanations are required if any marked evil appear to continue without abatement." Not only is the metropolitan police active night and day in preventing depredations and suppressing mendicancy, but its attention is directed to giving assistance in case of accidents, reporting nuisances and obstructions, and in keeping a vigilant eye upon the recesses of profligacy and crime. The same services are performed with more or less efficiency in the large towns which have the services of a trained body of men.

The expense of the eleven police courts of the metropolis, for 1845, amounted to 46,765*l.*, the greater part of which (33,329*l.*) was defrayed out of the Consolidated Fund. The salary of one magistrate (New-street) was 1900*l.* a year; and each of the others, 23 in number, received 1000*l.* The fees, penalties, and forfeitures received at the different courts amounted to about 5000*l.*

The difficulty of re-organising the rural constabulary has hitherto retarded the general improvement of this force, while the increased vigilance of the towns has rendered such a measure more imperative. In October, 1837, a commission was appointed under the crown "to inquire into the best means of establishing an efficient constabulary force in the counties of England and Wales;" and the commissioners having taken means to ascertain the opinions of the magistracy in each petty-sessional division in the country, it was found that, out of 435 divisions, the magistrates in 123 of them recommended the appointment of a paid rural police; in 13 divisions they recommended such a force, with a proviso that it be placed under their exclusive control; in 77 divisions the appointment of a patrol or of additional constables was recommended; in 16, the better remuneration of the present constables; in 87 divisions it was considered that further security was necessary; and in 122 divisions an opinion was given that no alter-

ation was required. The evils of the present inefficient system are fully described in the Report of the Constabulary Commissioners (No. 169, Session 1839). Some of their recommendations involve questions of provincial organisation, which render it very difficult to bring a uniform system of police administration into general operation. In a bill introduced into the House of Commons in 1839, an attempt was made to remove some of these obstacles, and a very clear and detailed account of the plan was printed with the bill (No. 71, Session 1839); but the measure was regarded as too elaborate, and introduced so many innovations as to occasion its ultimate rejection.

The following is a brief summary of the principal reasons which induced the Constabulary Commissioners to recommend the appointment of a paid police force in lieu of the present parish constables.—The want of organization in any existing force has encouraged crime, and each person living by depredations costs much more to the community than a paid constable. Besides the expenses of judicial establishments, a sum exceeding 2,000,000*l.* is paid annually in England for the repression of crime, while the means for the attainment of this object are imperfect and inefficient. Even the money at present contributed by voluntary associations for self-protection would, it is thought, go far towards obtaining an effective combined force; and there would be also the saving of time to several thousand persons now annually forced into almost useless service as constables, or a saving of money which is paid for substitutes. The extent of the force required is estimated at rather more than 8000 men, and the annual cost at a sum below 450,000*l.*, including expenses of management and other charges; the whole cost would not exceed 1*½*d. in the pound on the valuation of real property in England and Wales in 1815; and it is proposed that one-fourth of the annual cost be defrayed out of the consolidated fund, and the other three-fourths out of the county rate. The average number of commitments in England is upwards of 100,000 annually, which number, it is assumed, represents a total of 40,000

persons living wholly by depredation, to which must be added those who live partially by such means and escape detection, to meet which active body a trained force of 8000 men appears to be a moderate estimate. The commissioners recommended that a disposable force of 300 or 400 additional men be kept for extraordinary services. The patronage connected with a paid constabulary should be vested in those who are directly responsible for its efficiency; and local supervision and control might be made consistent with this arrangement. The success of such a force would of course depend to a great extent upon its being seconded by popular feeling, and, contrary to the opinion of many persons, it would be less likely to infringe upon personal liberty than a body of isolated individuals, for an acquaintance with legal duties forms part of the training of a combined force, which must in all cases have general rules for its conduct and government. Should a trained constabulary be established, the commissioners recommended that the men be changed from one district to another in the same manner as the officers of the Excise establishment.

The government has not thought proper to take any steps for the general establishment of a trained constabulary force in England and Wales; but in 1839 an act was passed (2 & 3-Vict. c. 93) which enabled the justices in quarter sessions to appoint county and district constables, and thus left the improvement of the police to their discretion. A report must be previously made to the secretary of state, showing the necessity of appointing additional constables. By 2 & 3 Vict. no more than one constable could be appointed to each one thousand of the population; but by 3 & 4 Vict. c. 88, this limitation is done away with. The expenses of the police force (rural police) are charged upon the county rate in the several divisions in which the force has been appointed. To secure unity of action and general uniformity, the secretary of state is empowered to frame rules for the regulation of the force. The men employed in it are not to exercise any other employment, nor allowed to vote at

elections for a member of parliament. Under the provisions of these acts a rural police force has been appointed in several counties. The act 3 & 4 Vict. c. 88, contains provisions for the consolidation of the borough and county police in cases where the respective authorities desire to enter into such an arrangement.

In addition to the two acts above mentioned, there are other statutes which enable magistrates to obtain any additional police force which may be requisite to ensure the conservation of the peace. [CONSTABLE.]

The Irish constabulary partakes much more of a military character than the London police or the rural police of the English counties. They are stationed in barracks, have fire-arms, and are removed from one part of the country to another. In 1845 the Irish constabulary consisted of 9193 persons, under the command of an inspector-general, who has a salary of 1500*l.* a year. There are a deputy inspector-general with a salary of 1000*l.*, and a second deputy with a salary of 800*l.* There are 2 provincial inspectors, 18 paymasters, 35 county inspectors, 210 sub-inspectors; 260 head constables, 1458 constables, 6368 sub-constables, first class, and 1039 of the second class. Connected with the police system there are 60 stipendiary magistrates, with salaries of from 350*l.* to 1000*l.* a year, besides certain allowances. The total expense of the force in 1845 was 451,577*l.*, of which sum 180,080*l.* was borne by counties, cities, and towns, and 271,497*l.* was charged upon the Consolidated Fund. The prime minister, Sir Robert Peel, in his speech on the general policy of the country on 27th January, 1846, proposed to charge the whole expense of the Irish Constabulary Force upon the public income, partly with a view to the relief of landlords and partly in order that the executive may have a more complete control over the force.

POLICY and POLITY. Policy is generally used to signify the line of conduct which the rulers of a nation adopt on particular questions, especially with regard to foreign countries, and according to our opinion of that particular line of conduct we say that it is good or bad

Polity has a more extended meaning than the proper government, and this is the Greek *politikos* (political), which it is derived. Hence, in an extended sense, the branch of polity is concerned with the internal affairs of the state. In a more extensive sense it is a branch of preventive justice, distinct from the administration of justice, the object of which, these things, is the punishment of criminals. [Foster.]

[C. C. Linschmeider.]

POLITICAL ECONOMY. The word is from the Greek *oikonomia*, i.e., "house-management," or "state-management," the notion of which is generally understood. It does not in the original language signify "saving" or "hoarding," but the prudent and profitable management of property; and this is the sense in which the term is employed in the *Science of Wealth* (*Oikonomia*).

POLITICAL ECONOMY or **PUBLIC ECONOMY** means a management of a state or the management of a private. But this is not the sense in which the term is used; and the term is objectionable by reason of the ambiguity which it suggests. It is true that many governments act on the notion that the sovereign should direct the industry of the state, and to some degree provide for the wants; and many persons are of opinion that one of the functions of government is to regulate agriculture, and commerce; prescribe exactly to every man what he should employ himself, how to make use of his land, and to make use of his industry to the advantage of the state. Adam Smith gave to his title of the *'Wealth of Nations,'* which indicates much better than *Political Economy* the object of investigation, which is, "to explain how the resources of the industry of the people, or what has been called the *'funds which in ages and nations have supplied man with consumption.'*" The word *indicates* that the inquiry is

mainly concerned about material results, about the products which man by his labour produces for his necessities and his pleasures. The word *Nations* implies that the object of the inquiry is the aggregate wealth which any political society acquires; but this investigation further implies an examination into the conditions under which the individual members of a state labour for the production of a nation's wealth, and what they get for their labour; for the wealth thus acquired is not the wealth of a nation in the sense in which some things belong to a nation or to the public. The great mass of products are appropriated by individuals in accordance with the rules of property or ownership that exist in some form or other in all nations, and the terms of contract between capitalists and labourers. All that is produced, except that part which the state produces as a state, or takes for the purposes of the general administration, is appropriated by individuals, and is either saved or consumed. The term *Political Economy* would have an exact meaning, if we understood it to express that economy or management which the state as a state exercises or should exercise for the benefit of all. It would comprehend all that the state should do for the general interest, and which individuals or associations of individuals cannot do as well; it would thus in a sense coincide with the term *Government*. Being thus defined, it would exclude all things that a state as a state should not do; and thus the inquiry into the *Wealth of Nations* would mean an inquiry into all those conditions under which wealth is produced, distributed, accumulated, and consumed or used by all the individuals who compose any given political community. But though the subject of *Government* is easily separated from the proper subject of *Political Economy*, everybody perceives that there is some connection between the two things; and this is the foundation of some of the false notions that have prevented *Political Economy* from attaining the form of an exact science. Everybody perceives that a Government can do much towards increasing or diminishing "the resources of the people."

body of the people;" but everybody does not see what a Government should do or should not do in order that this revenue may be the greatest and most beneficially distributed.

Those who at the present day maintain that agriculture should be protected, or, expressing the proposition in other terms, say that native industry ought to be protected, assume that a Government ought to regulate the manner in which a nation shall acquire its revenue. To be consistent they should go further: a Government should regulate the mode in which the revenue shall be distributed, accumulated, and used. In fact Governments by their acts, and mainly by the weight and kind of their imposts, do this in some degree, though their object may not be to do this. But to protect native industry is to regulate purposely and designedly part of the process by which a nation produces the sum total of that revenue of which all persons, landowners, capitalists and labourers, get some portion. This protection consists in excluding many articles of foreign produce, or laying heavy customs' duties on them, in order that those who produce such articles at home may get a better price for them. Thus he who has to buy the articles must give more for them than he would if there were no protection; and precisely to the amount of this higher price are his means directly diminished for buying anything else that he wants for productive use or simple enjoyment. The indirect consequences of such Government regulations also diminish his own productive powers.

The French Economistes, as they are termed, of whom Quesnay was the head, considered agriculture as the only source of wealth, and had other opinions about agriculture as distinguished from manufactures, which are not well founded; but they did not for that reason maintain that agriculture should have any exclusive protection: on the contrary, they maintained that all taxes should fall on land, and that trade in corn should be freed from the restrictions to which it was then subjected between one province and another in France.

It is not easy to make an exact classification of the subjects which writers on

Political Economy discuss. The matters which they do discuss may be generally enumerated as follows:—The production of wealth and the notion of wealth, which comprehend the subjects of Accumulation, Capital, Demand and Supply, Division of Labour, Machinery, and the like. But all the matter of Political Economy is so connected, that every great division which we may make suggests other divisions. The Profits of Capital and the Wages of Labour, the Rent of Land, and the nature of the Currency, are all involved in the notions of Accumulation, Capital, and so forth. No treatise has perhaps yet appeared which has exhibited the subject of Political Economy in the best form of which it is susceptible.

The way in which "the Revenue of the great body of the people" is distributed, is an inquiry only next in importance to the mode in which it is produced; and the mode and proportions in which it is distributed re-act upon future production. He who receives anything out of the "Revenue" is, by the supposition, a person who has contributed to it, either as a landowner, a capitalist or a labourer. If he is neither a landowner, a capitalist nor a labourer, he is supported out of the public revenue either by alms, or by pensions, or by the bounty of parents or friends. Omitting these cases, a man's title to a part of "the Revenue of the great body of the people," if it is an honest title, is either the title which he has to the produce of land or capital, of which a portion has been appropriated to him in conformity to the rules which establish ownership, or it is the title of one who labours for hire and receives his pay pursuant to the terms of the contract. The owner of land and capital, if he does not employ it himself, lets others have the use of it in consideration of interest or rent or some fixed payment.

The use which a people shall make of their revenue is the last great division of the subject. The analogy here between Economy in its proper sense and the Economy of a People is pretty close. Judicious Economy is the making the best use of one's income; and the best use is to spend it on things of necessity first, on things which gratify the taste and the understanding next, but to get

something as a reserve against emergencies, and as a means of adding still her to our enjoyments. The savings individuals constitute the savings of

Nation; there is no saving by the den as a Nation; the national accumulation is the sum total of individual accumulations. The savings are made only altogether without concert or co-operation. Division of labour and co-operation of labour, which are in reality the same thing when properly understood, set saving in production, and consequently they effect saving in consumption in far as they make anything cheaper; but this is not individual saving; it is an addition to the public wealth, by which all individuals, or some individuals, get more for their money than they otherwise would, or get the same thing cheaper than they otherwise would. The social revenue is always created by co-operation, in which each man receives his portion. The use or consumption of a man's portion of "the revenue of the whole of the people" and the degree which each man co-operates towards creating this revenue, are unconnected. Each man consumes, in the true and literal sense of consumption, by himself and for himself—he produces together with others for others as well as for himself. It is not that he who consumes merely for consumption's sake does indirectly affect production; and this is the kind of consumption which is handled least completely by these economists, though it is in fact the chief element in the whole science. Thus, in his 'Principles of Political Economy,' he has hinted at this: "Adam Smith has stated that capitalists are induced by parsimony, that every frugal man is a public benefactor ('Wealth of Nations,' b. II. ch. 8), and that the increase of wealth depends upon the balance produced above consumption (b. IV. ch. 3). That these propositions are true to a great extent is perfectly unquestionable. No considerable and continued increase of wealth could possibly take place without that degree of frugality which secures annually the conversion of some income into capital, and creates a balance produced above consumption; but it is not obvious that they are not true to an

indefinite extent, and that the principle of saving, pushed to excess, would destroy the motive in production. If every person was satisfied with the simplest food, the poorest clothing, and the meanest houses, it is certain that no other sort of fuel, clothing, and lodging would be in existence; and as there would be no adequate motive to the proprietors of land to cultivate well, not only the wealth derived from conveniences and luxuries would be quite at an end, but, if the same division of land continued, the production of food would be prematurely checked, and population would come to a stand long before the soil had been well cultivated. If consumption exceed production, the capital of the country must be diminished, and its wealth must be gradually destroyed, from its want of power to produce; if production be in a great excess above consumption, the motive to accumulate and produce must cease from a want of will to consume. The two extremes are obvious; and it follows that there must be some intermediate point, though the resources of political economy may not be able to ascertain it, whereby, taking into consideration both the power to produce and the will to consume, the encouragement to the increase of wealth is the greatest. The division of landed property presents another obvious instance of the same kind. No person has ever for a moment doubted that the division of such immense tracts of land as were formerly in possession of the great feudal proprietors must be favourable to industry and production. It is equally difficult to doubt that a division of landed property may be carried to such an extent as to destroy all the benefits to be derived from the accumulation of capital and the division of labour, and to occasion the most extended poverty. There is here then a point, as well as in the other instance, though we may not know how to place it, where the division of property is best suited to the actual circumstances of the society, and calculated to give the best stimulus to production and to the increase of wealth and population." (Malthus, Introduction.)

It is only by a close analysis of the

matter which all economical writers agree in considering as belonging to Political Economy, that we arrive at the more exact notion of the objects and limits of the science, or at such objects and limits as may be comprehended within a science. The head which is the last in the list, Consumption, may be either Consumption for the purpose of further production, or Consumption for the sole purpose of enjoyment. This Consumption for the purpose of enjoyment is a kind of consumption which some economical writers have scarcely thought of, though all the rest of the world are thinking of it and labouring for it. This Consumption for enjoyment may to some extent and in some cases coincide with or contribute to further production; but as such, as Consumption for enjoyment's purpose, it must not be confounded with any other kind of consumption. The true basis of all those investigations which are included under the name of Political Economy is this: That man desires to enjoy, and that he will labour in order to enjoy. The nature of his enjoyments will vary with the various states of society in which he lives, with his moral, social, and intellectual character. As he labours in order to enjoy, and as one man gives his labour in exchange for another man's labour, it follows that the exchangeable value of every man's labour will ultimately depend on the opinion of him who wishes to have the fruits of such labour.

It therefore concerns all who labour that they understand on what the value of their labour depends. It is not the value of a man's labour to himself which we have to consider here, but the value of it to others. A man may value his own labour as he pleases, but if he wishes to exchange it, he will find that it is other persons who then determine its value: the real value is what he can get for it. This fact is well known to all who produce anything to sell, or offer their labour for hire. The value of anything to him who has not the thing, but wishes to have it, is not measured by the opinion of him who has it to sell. The price of purchase is a result which is compounded of the *wants of the buyers* and the quantity or *supply of the thing which they desire to*

have. There is no formula which accurately expresses the numerical value of this result; nor would a numerical result be invariable. It depends on the supply of the things which purchasers desire, as also on their necessary wants, taste, and caprice. The wants of the buyers, the real efficient demands, imply ability to means to buy with; and this is a varying element. Thus there are two varying elements of selling price, the demand and the supply. Prices vary least in those things which are the primary necessities, when trade is free from all restrictions; or they are at least not subject to the same variations of taste and caprice. One of the varying causes of price, opinion, is here pretty nearly constant; and the risk of variation is mainly in the supply, which depends on seasons and other accidents. When the value of a thing depends on an opinion that is liable to change, the supply will be less certain on account of the uncertainty of opinion. No man can say with certainty what will be the value of anything at a future time; but long experience has taught men the probable limits within which the selling prices of most articles of common use will vary, and a knowledge of these limits enables them to determine whether they can undertake to furnish the market with any given article so as to have a reasonable security for a profit. Profit is the condition without which things will not continue to be produced for sale. The cost that is expended upon a thing does not determine its value, by which is meant its selling price; but the selling price determines whether the thing will continue to be produced. In the case of many new articles, the production of them is a pure risk, and dear-bought experience alone in many cases teaches a man that he has laboured much to no purpose—that he has something to sell, which nobody wishes to buy. Articles of ordinary consumption are regularly produced, because the efficient demand combined with the quantity in the market secures a remunerating price. If other articles take the place of those which have been in ordinary use, the old articles cease to be made. If the same articles, owing to improved processes, are

based at less cost, the selling price is raised, not because the labour bestowed on them is less, but because the supply of such articles is more abundant where there is free competition. That labourer expended on an article does not realize his exchangeable value is clear in the case supposed, for if there was competition among producers, the purchasers would not get the thing a bit the cheaper, simply because it could be produced at less cost. The producer might choose enough to lower the price, in order to get an increased sale, and an increased profit; but in fact, the increased cost of production is that which lowers prices, and not the will of the seller. If he increases his production, he must sell at a lower price, for he will lose by his increased production, and he cannot prevent the price from falling, unless the demand increases more than his production.

The price of all labour, Wages or Hire, is determined by the opinion of those who want it and have the means of paying it, and the amount of the kind of labour that is in the market. The price is sometimes as low as nothing, which means that nothing is not wanted. This is true of kinds of labour from the labour of him who sweeps the streets to the labour of him who produces the finest work of art or the best effort of intellectual power.

The notions that the value of every article produced by labour is determined by the cost of production, and that the value of labour is determined by the value of the labourer or the prices of other things, are fruitful sources of misery. Every man can cite instances in which these doctrines are palpably false, and no man can cite many instances in which they are really true, though at first sight they appear to be so. [PRICE.]

If we would investigate the economic condition of a country as to the quantity of wealth, its distribution, its consumption, we must ascertain population, the various kinds of employments, the amount of articles produced, the wages of the labourer, the profits of the capitalist, rate of interest, rent of lands and houses, and the various articles consumed, both articles the produce of the country and articles imported.

22. 11.

of which the articles exported are the equivalents. We must ascertain the rate at which population increases in a given period, the rate at which permanent improvements, such as roads, houses, docks, and the like, increase, and all improvements of a permanent character. In such an investigation the economist may proceed on the supposition that man is acting free from all restraint, except the restraint which compels every man to respect his neighbour's property and person; that every man is labouring just as he pleases without constraint or direction, and that every man is enjoying what he produces or what he gets in exchange for his own production, with no other restraint than the law imposes for the protection of other men's property and persons. But such a state of things does not exist, and perhaps never did; and when the economist has investigated the actual state of a nation's wealth and its consumption, he will have to ascertain how and to what extent men are limited in their industry by positive law, by positive morality, and by anything else. It is his business to detect those artificial restraints which interfere with a man's industry and consequently with his enjoyment. In his inquiries he must never forget that consumption for consumption's sake is the end of all our labour; not such a consumption as shall destroy wealth, but such a consumption as is consistent with permanent and increased means of enjoyment, both for the actual generation and for an increased number in the succeeding generation. He therefore recognises saving, accumulation, and productive consumption as necessary means towards the end of increased enjoyment. But he acknowledges no real enjoyment, he does not admit that there is happiness, and he denies the possibility of improvement of the social condition of a people, unless the necessities of life, such as the country and climate require, are possessed by all—food, raiment, and lodging. When these things can be had, and not before, a man has leisure and inclination to supply other wants that lie dormant while he is hungry, naked, and without shelter against the weather.

It will be discovered that there are

peculiar circumstances in most countries that affect the happiness of the people in different ways. It is the business of the economist to investigate these circumstances and to ascertain them, whether the circumstances may be the peculiar form of the government, the habits of the people, their ignorance, or any other cause. His problem is to trace to their causes all those conditions which interfere with the enjoyment of the necessities of life, without a supply of which no man can be happy. Whatever he can prove to interfere with such a supply, to diminish such a supply, to make it less than it otherwise would be, is within the province of his investigation; whether it is arbitrary power in a monarch, ignorance in a constitutional government, heavy taxation, restrictions upon the free exercise of industry, or anything else, by whatever name it is called, that interferes with a man's industry, and consequently with his enjoyment. If he carries his inquiries beyond those necessities of life which all men want before they ask for anything else, he will find ample employment in investigating the causes which interfere with or limit the class of secondary enjoyments, those which a man craves for when he has satisfied the first. He will discover that the same kind of restraint or interference often limits the secondary enjoyments, and that their being limited operates upon the primary wants, and so limits the means of gratifying them also. He will thus approach the solution of a great question, and endeavour to determine whether the sovereign power should interfere with industry in any way, except to raise money by taxation for the necessary expenses of the administration; and he will endeavour to determine how the required amount of money may be raised so as to curtail each man's enjoyments in the least possible degree.

If the question of freedom from all restraint on industry, except such restraints as have been alluded to, is determined in favour of freedom, there will still be plenty for the economist to do.

The greatest enemy to man is his own ignorance. The mode in which men shall so organize their labour that each

shall get more out of the common stock by such organization than by any other mode, is the great question that concerns us all. Knowledge must guide our industry, or it may be fruitless, even though it has perfect liberty of action. Enjoyment is the end to which knowledge alone can lead us. Enjoyment implies the sufficient and reasonable satisfaction of the appetites, which must precede the enjoyment of the imagination and the intellectual faculties; the harmonious combination of the two enjoyments makes Happiness.

The field for the Political Economist is as extensive as Society itself; but his labour has certain limits. He may often determine when legislation is unwise, or when it is wanted; but he does not concern himself about the making of the law. He is satisfied if a bad law is repealed, or if, when useful, it is so framed as to accomplish the object. Nor does he concern himself about forms of Policy, or systems of religion or morals, or philosophy as such. But he does investigate the mode in which they operate upon industry directly or indirectly and mainly their mode of operation on the primary wants, those wants which all men seek to satisfy, and which all must in some degree satisfy, or they must cease to live. The great test, the unerring test, of the condition of a nation, is the condition of those who labour for their daily bread. If these have sufficient, it is a certain deduction that others have more than sufficient, and that there may be improvement in the social and moral condition of all classes. But ignorance may prevent improvement. It will, therefore, be the province of the economist to show how, when the primary wants of a people are satisfied, they may secure, so far as it can be secured, so happy a condition, and also to show by what combinations the gratification of the secondary wants may be secured with the least trouble and expense. The fundamental principles of the economist are indeed, as it has been often remarked, very few; and it is equally true that very little can be deduced from them. They must be constantly applied, in the way of test and correction, and the manner in which they

is applied in the experience of man, a man seldom reports nor over-estimates the value of his science; but the subject is "immersed in mist" and no expenditure of labour, no labour than to expect a few, even if absolutely true, to solve us to the whole or parts of which it often not apply.

Literature of Political Economy is sparse. Much that has been written the value for practice, but various and a history of opinion. An of this part of the subject is given Penny Cyclopaedia, under the title of Economy, and in 1846 Mr. G. J. H. published a useful work on The Literature of Political Eco-

It is a classified catalogue of the of works in the different depart- of Political Economy, and is used with historical, critical, and social notices.

Five years ago a Professorship of al Economy was founded in the city of Oxford, by Mr. Drummond Stow. Whately has founded a similar-ship in the University of . There are unendowed professor- at the University of Cambridge, University College and King's e, London; but that of University e, London, has not been filled for years.

POLYGYAMY is the name of the according to which a man may more than one lawful wife at a which custom prevails in several e. Polygamy has existed in our time immemorial, and Ma- dachism adopted and confirmed too. Montesquieu pretends that ay in the East is the consequence greater number of female for the country; but this surmise is by e proved. Another and a more e reason may be found in the ore old age of the female sex in atries. Niebuhr, in his Travels in/ gives a curious conversation e had with an Arab on the subject gyamy. (Reichsbeschreibung, 8, 263.) he Arab said Koran usage at a man to have more than one a time. But divorce became so

common among the Romans, that the frequent change of wife became almost a practical polygamy. However, this practice of divorce was probably con- fined to the rich and luxurious, who, when they have no regular occupation, are generally the most licentious mem- bers of society. The barbarous nations, on the contrary, that is to say, those who were not Greeks or Romans, practised polygamy, with the exception of the Germans, "who alone," says Tacitus, "among all the barbarians, are content with a single wife" (Germani, 17.)

In the scriptures we find instances of polygamy recorded before the flood. (Genesis, iv, 19.) It was common in the patriarchal times, and we have the in- stance of Jacob marrying two sisters. By the law of Moses it appears to have been tolerated. (Exodus, xxi, 9, 10, and Leviticus, xxi, 15.) But in the time of our Saviour, no indication appears of its being common among the Jews. Divorce, however, was frequent, and our Saviour (Matthew, xix, 9) reproaches the custom. St. Paul speaks always of mar- riage in terms implying the union of one man with one woman. In Christian countries, polygamy has been long since universally forbidden, both by the church and by the civil law, under severe penalti- es, which in some countries amounted to death. In England, it is a punishable offence. [Hussey.]

The Koran allows a man to have four legitimate wives; but it is only the rich who avail themselves of this permission. The Arabs are generally content with one wife.

Polygamy can never prevail much in any country where slavery does not exist in some form, even if the practice is permitted. The expense of two or more wives is a sufficient check on the practice. It is only the rich who can indulge in this way. A poor man in any country will find one wife and one set of children quite enough for him. If in England, for instance, it was per- mitted for a man to have several wives at once, all of whom should be in the legal condition of a wife, the expense alone would prevent any prudent man from availing himself of the legal permission.

if there were no other objection. When the wife is a kind of slave to her husband and assists to support him by her labour, a plurality of wives is merely an increasing of a man's slaves with the increased power of sexual intercourse at the same time. That such a mode of life must be a brutalized and a half savage state, is obvious enough; and it is not consistent with any improvement in the condition of women; and on the improved condition of women mainly depends the improvable condition of society. If in any country polygamy were carried to a great extent among the rich, the consequence would be that the poor must go without wives, unless the demands of the rich were supplied by importation of female slaves, which is the case in some countries.

That union which exists in the cohabitation of a man with one woman makes a family quite a different thing from a family which is founded on the cohabitation of a man with more than one woman. Traced out to all their consequences, the two practices produce distinct social systems, which, in nearly every respect, are right opposed to one another. The advantage is on the side of monogamy, though the nations which maintain polygamy might easily discover some weak points in the monogamist practice.

POOR. [POOR LAWS AND PAUPERISM.]

POOR LAWS AND PAUPERISM.

A pauper in England is a person who, unable to support himself, receives money or money's worth from the contributions of those who are by law compelled to maintain him wholly or in part. There are many poor persons who are not paupers. He who gets his living by his labour, but receives no legal relief, is not a pauper. He who will not or does not work, but gets his living by begging, is a mendicant. Those who are supported wholly or in part by the voluntary gifts of charitable persons are not paupers.

The causes of pauperism are numerous, and it would be equivalent to an attempt to explain most of the phenomena of modern society, if we should affect to assign all its possible or even all its actual causes in any given country. Some of the

causes however are clearly traceable to positive law. Every history of positive legislation in this and other countries shows that those who have had the power to make laws have not only ignorantly and unintentionally injured society by not perceiving the tendency of their own enactments, but have often purposely and designedly attempted to accomplish objects which they believed to be beneficial to society, but which an enlarged experience and a sound philosophy have proved to be detrimental to the general interest. When the object has been a good one, a legislator has often failed in accomplishing it, owing to ignorance of the proper means. In England legal interference with the condition of the poor has in some degree been exercised for nearly 500 years. In no country have greater efforts been made to regulate their condition, nor greater mistakes committed in this branch of government.

The great object of the earlier efforts in pauper legislation was the restraint of vagrancy. The 12th Richard II. c. 7 (1388) prohibits any labourer from quitting his dwelling-place without a testimonial from a justice of the peace, showing reasonable cause for his going, and without such a testimonial any such wanderer might be apprehended and put in the stocks. Impotent persons were to remain in the towns where they were dwelling at the passing of the act, provided the inhabitants would support them; otherwise they were to go to the places of their birth, to be there supported. By acts passed in the 11 and 19 of Henry VII. (1495 and 1504) impotent beggars were required to go to the hundred where they had last dwelt for three years, or where they were born, and were forbidden to beg elsewhere. By the act 22 Henry VIII. c. 12 (1531), justices were directed to assign to impotent poor persons a district within which they might beg, and beyond which they were forbidden to beg, under pain of being imprisoned and kept in the stocks on bread and water. Able-bodied beggars were to be whipped and forced to return to their place of birth, or where they had last lived for three years.

These acts appear to have had no pro-

anent effect in repressing vagrancy. An act passed in 1536 (27 Henry VIII. c. 25) is the first by which voluntary charity was converted into compulsory payment. It enacts that the head officers of every parish to which the impotent or idle-bodied poor may resort under the revisions of the act of 1531, shall receive and keep them, so that none shall be compelled to beg openly. The able-bodied were to be kept to constant labour, and every parish making default was to forfeit twenty shillings a month. The money required for the support of the poor was to be collected partly by the head officers of corporate towns and the churchwardens of parishes, and partly was to be derived from collections in the churches and on various occasions where the clergy had opportunities for exhorting the people to charity. Almsgiving beyond the town or parish was prohibited, on forfeiture of ten times the amount given. A "sturdy beggar" was to be whipped the first time he was detected in begging; to have his right ear cropped for the second offence; and if again guilty of begging, was to be indicted "for wandering, loitering, and idleness," and if convicted was "to suffer execution of death as a felon and an enemy of the commonwealth." The severity of this act prevented its execution, and it was repealed by 1 Edward VI. c. 3 (1547). Under this statute every able-bodied person who should not apply himself to some honest labour, or offer to serve for even meat and drink, was to be taken for a vagabond, branded on the shoulder, and adjudged a slave for two years to any one who should demand him, to be fed on bread and water and refuse meat, and made to work by being beaten, chained, or otherwise treated. If he ran away during the two years, he was to be branded on the cheek, and adjudged a slave for life, and if he ran away again, he was to suffer death as a felon. If not demanded as a slave, he was to be kept to hard labour on the highways in chains. The impotent poor were to be passed to their place of birth or settlement, from the hands of one parish constable to those of another. The statute was repealed three years after, and that of 1551 was

revived. In 1551 an act was passed which directed that a book should be kept in every parish, containing the names of the householders and of the impotent poor; that collectors of alms should be appointed who should "gently ask every man and woman what they of their charity will give weekly to the relief of the poor." If any one able to give should refuse or discourage others from giving, the ministers and churchwardens were to exhort him, and, failing of success, the bishop was to admonish him on the subject. This act, and another made to enforce it, which was passed in 1558, were wholly ineffectual, and in 1563 it was re-enacted (5 Eliz. c. 3), with the addition that any person able to contribute and refusing should be cited by the bishop to appear at the next sessions before the justices, where, if he would not be persuaded to give, the justices were to tax him according to their discretion, and on his refusal he was to be committed to gaol until the sum taxed should be paid, with all arrears.

The next statute on the subject, which was passed in 1572 (14 Eliz. c. 5), shows how ineffectual the former statutes had been. It enacted that all rogues, vagabonds, and sturdy beggars, including in this description "all persons whole and mighty in body, able to labour, not having land or master, nor using any lawful merchandise, craft, or mystery, and all common labourers, able in body, loitering and refusing to work for such reasonable wage as is commonly given," should "for the first offence be grievously whipped, and burned through the gristle of the right ear with a hot iron of the compass of an inch about;" for the second, should be deemed felons; and for the third, should suffer death as felons, without benefit of clergy. For the relief and sustentation of the aged and impotent poor, the justices of the peace within their several districts were "by their good discretion" to tax and assess all the inhabitants dwelling therein. Any one refusing to contribute was to be imprisoned until he should comply with the assessment. By the statutes 39 of Elizabeth, c. 3 and 4 (1598), every able-bodied person refusing to work for the ordinary wages

was to be "openly whipped until his body be bloody, and forthwith sent, from parish to parish, the most strait way to the parish where he was born, there to put himself to labour as a true subject ought to do."

The next act on this subject, the 43 Elizabeth, c. 2, has been in operation from the time of its enactment, in 1601, to the present day. A change in the mode of administration was however effected by the Poor Law Amendment Act (4 & 5 Wm. IV. c. 76), which was passed in 1834. During that long period many abuses crept into the administration of the laws relating to the poor, so that in practice their operation impaired the character of the most numerous class, and was injurious to the whole country. In its original provisions the act of Elizabeth directed the overseers of the poor in every parish to "take order for setting to work the children of all such parents as shall not be thought able to maintain their children," as well as all such persons as, having no means to maintain them, use no ordinary trade to get their living by. For this purpose they were empowered "to raise, weekly or otherwise, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes, mines, &c., such sums of money as they shall require for providing a sufficient stock of flax, hemp, wool, and other ware or stuff, to set the poor on work, and also competent sums for relief of lame, blind, old, and impotent persons, and for putting out children as apprentices." Power was given to justices to send to the house of correction or common gaol all persons who would not work. The churchwardens and overseers were further empowered to build poorhouses, at the charge of the parish, for the reception of the impotent poor only. The justices were further empowered to assess all persons of sufficient ability, for the relief and maintenance of their children, grandchildren, and parents. The parish officers were also empowered to bind as apprentices any children who should be chargeable to the parish.

These simple provisions were in course of time greatly perverted, and many

abuses were introduced into the administration of the law. The most mischievous practice was that which was established by the Justices for the county of Berks in the month of May, 1795, when, in order to meet the wants of the labouring population caused by the high price of provisions, an allowance in proportion to the number of his family was made out of the parish fund to every labourer who applied for relief. This allowance fluctuated with the price of the gallon loaf of second flour, and the scale was so adjusted as to return to each family the sum which a given number of loaves would cost beyond the price in years of ordinary abundance. This plan was conceived in a spirit of benevolence, but the readiness with which it was adopted in all parts of England clearly shows the general want of sound views on the subject. Under the allowance system the labourer received a part of his means of subsistence in the form of a parish gift, and as the fund out of which it was provided was raised from the contributions of those who did not employ labourers, as well as of those who did, their employers, being able in part to burthen others with the payment for their labour, had a direct interest in perpetuating the system. Those who employed labourers looked upon the parish contribution as part of the fund out of which they were to be paid, and accordingly they lowered their rate of wages. The labourers also looked on the parish fund as a source of wages, independent of their labour wages. The consequence was that the labourer looked to the parish aid as a matter of right, without any regard to his real wants, and he received the wages of his labour as only one and a secondary source of the means of subsistence. His character as a labourer became of less value, and his value as a labourer was thus diminished under the combined operation of these two causes. In 1832 a commission was appointed by the crown, under whose direction inquiries were made through England and Wales, and the actual condition of the labouring class in every parish was ascertained with the view of showing the evils of the existing practice, and of suggesting some remedy. The labour of

inquiry was great, but in a short time poor was presented by the commissioners, which explained the operation of law as administered, with its effects on different classes, and suggested real measures. This Report was presented in February, 1834, and was sold by the passing, in August, 1834, of the Poor Law Amendment Act, 4 & 5 Wm. IV. c. 76, in which the principal recommendations of the commissioners were adopted. This Act was amended by 7 & 8 Vict. c. 101 (9th August, 1844). The chief provisions of this law are the appointment of a central board of commissioners, whose quarters are in Somerset House, London, for the real superintendence and control of bodies charged with the management of funds for the relief of the poor.

There are nine assistant-commissioners, each one of whom has a letter: the assistant-commissioners visit districts and see that the orders of the commissioners are executed. The assistant-law commissioners are appointed and removable by the commissioners.

The whole administration of the Poor is under the direction of the secretary of state for the home department. The administration of relief to the poor is under the control of the commissioners, who make rules and regulations for the purpose, which are binding upon all the local authorities. They are empowered to order houses to be built, hired, altered, or repaired, with the consent of the majority of the board of guardians. They have power of uniting several parishes for purposes of a more effective and economical administration of poor relief, but at the actual charge in respect to its administration.

The poor is defrayed by each parish, or united parishes, or Unions, are managed by boards of guardians annually elected by the rate-payers of the various districts, but the masters of workhouses (other paid officers) are under the orders of the commissioners, and removable by them. The system of paying wages partly of poor-rates is discontinued, and in extraordinary cases, as to which the commissioners are the judges, relief is only given to able-bodied persons or to families within the walls of the

workhouse. Another branch of the poor-law, which was materially altered by the act of 1834, was that relating to illegitimate children, which is explained under BASTARDY.

The 7 & 8 Vict. c. 101, § 12, empowers the poor-law commissioners to prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions of the indentures of apprenticeship: and no poor children are in future to be apprenticed by the overseers of any parish included in any union or subject to a board of guardians under the provisions of the 4 & 5 Wm. IV. c. 76, but it is declared to be lawful for the guardians of such union or parish to bind poor children apprentices. The 13th section abolishes so much of the 43 Eliz. c. 2, and of the 8 & 9 Wm. III. c. 3, and of all other acts, as compels any person to receive any poor child as an apprentice. The 14th and following sections make some new regulations as to the number of votes of owners of property and rate-payers in the election of guardians, and in other cases when the consent of the owners and rate-payers is required for any of the purposes of the 4 & 5 Wm. IV. c. 76. The 18th section empowers the commissioners, having due regard to the relative population or circumstances of any parish included in a union, to alter the number of guardians to be elected for such parish, without such consent as is required by the Act 4 & 5 Wm. IV. c. 76. Section 18 empowers the commissioners to divide parishes which have more than 20,000 inhabitants according to the census then last published, into wards for the purpose of the election of guardians, and to determine the number of guardians to be elected for each ward. The 23th section provides that so long as any woman's husband is beyond seas, or in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman or to her child or children shall be given in the same manner and subject to the same conditions as if she was a widow, but the obligation or liability of the husband in respect of such relief continues as before. The 28th section empowers the guardians of a parish or union to give relief to widows,

under certain conditions, who at the time of their husband's death were resident with them in some place other than the parish of their legal settlement, and not situated in any union in which such parish is comprised.

The 31st section makes some provision as to the burial of paupers.

The 32nd section provides that the commissioners may combine parishes and unions in England for the audit of accounts. By the 40th section the commissioners may, subject to certain restrictions there mentioned, combine unions, or parishes not in union, or such parishes and unions, into school districts, for the management of any class or classes of infant poor not above the age of sixteen years, being chargeable to any such parish or union, or who are deserted by their parents, or whose parents or surviving parent or guardians are consenting to the placing of such children in the school of such district. By the 41st section the commissioners are empowered to declare parishes or unions or parishes and unions within the district of the metropolitan police or the city of London, or of the city, towns, and boroughs mentioned in the schedule B annexed to the act, to be combined into districts for the purpose of founding and managing asylums for the temporary relief and setting to work therein of destitute houseless poor who are not charged with any offence and who may apply for relief or become chargeable to the poor's rates within any such parish or union.

The 53rd section provides for the punishment of persons who are guilty of misconduct in workhouses.

The other provisions of the Act are chiefly framed for the purpose of carrying into effect the general objects already described.

One important consequence which has resulted from the better management of the poor, and which is calculated to produce an important effect on their future condition, is the adoption of plans for the education of children resident in workhouses. Under the administration of the unamended law little or nothing was done towards this object, and in almost every case the child whose misfortune it was to

be brought up at the charge of the parish, continued through life dependent upon others for subsistence, and often followed a course of systematic dishonesty. The system of moral, intellectual, and industrial training which has been to some extent engrafted upon the administration of the amended law, is calculated to bring up the children of the workhouse to be useful members of society.

It will now be convenient to state how the law stood previously to the passing of the Act 4 & 5 Wm. IV. c. 76, as to relief to the poor and settlement, and then to notice some of its leading provisions.

Every indigent person, whether a native or a foreigner, being in any district of England or Wales, in which a fund is raised for the maintenance of the poor, has a right to be supplied with the necessaries of life out of that fund. This right depends on statute, and principally on the 43 Eliz. c. 2, which enacts that the churchwardens of every parish, and four, three, or two substantial householders there, to be nominated yearly under the hands and seals of two or more justices of the peace, shall be called overseers of the poor. [OVERSEERS.] Under this statute overseers could be appointed for parishes only. This proved very insufficient, because many large and populous districts were not situate within any parish, and consequently no overseers whatever could be appointed for them, and also because many parishes themselves were of such magnitude that one set of overseers could not properly attend to all the poor. To supply this defect, the 13 & 14 Car. II. c. 12, authorised the appointment of overseers in any township that was either extra-parochial or was part of a parish so large as to require distinct sets of officers for the management of its poor. Townships are sometimes created also by local acts.

It is the duty of these overseers to raise and administer the fund for the relief of the poor of their district. This fund, which is called the poor-rate, they are directed by the statute of Elizabeth in parishes, and by the statute of Car. II. in townships, to raise "weekly or otherwise, by taxation of every in-

ed, person, vicar, and other, and occupier of lands, houses, tithes, mines, quarries, or of tithes, coal-mines, or saltpetre, underwoods in the parish, in such competent sum and of money as they shall think fit, according to the ability of the parish."

no provisions are still however, since the 4 & 5 Wm. IV. c. 76, inadequate. Overseers cannot be made nor can a poor-rate be levied in any place that was not anciently a parish or a township. Many dissent from the present day form to part of parish or township; and the poor of districts, if unable to remove themselves to a parochial division of the country, here they will be entitled to relief and poor, may, as far as the law is met, perish from want.

A rate may be made according to exigencies of the place, which, as parish or township, may equally in either case be called a rate for any period not less than a year exceeding a year. The rate,

is made in writing, gives the names of the persons rated, a description of the property for which they are rated, the amount payable by them; it is also a declaration, signed by the officers, that the rate is, to the best of their belief, correct, and that they used their best endeavours to make

The rate so made and signed is taken to two justices for their approval, which is called the allowance of the rate, and notice of such allowance is affixed on the church doors (1 & 2 Wm. IV. c. 45) on the Sunday following, or on the day to be so affixed. This notice is the publication of the rate.

The statute expressly mentions both tenants and occupiers, inhabitants held liable to be rated in proportion to their ability within the parish, although they had no property there; and persons who were capable of occupation, and owners of property therein were held liable, although they resided elsewhere. Originally both real corporeal property and personal property within the parish were assessed, as constituting "the ability of the parish;" real corporeal property, and houses, may be assessed, where-

soever the occupier resides, and personal property, if the owner is resident within the parish. Incorporeal real property, since it is not the subject of occupation, seems not to be rateable unless incidentally, when, as in the case of the tolls of a canal, it is, as it were, annexed to and enhances the value of corporeal real property, which is the subject of occupation. As it is the occupier and not the owner of real corporeal property who is rated for it, it will be obvious that the term "real property" is not used in the poor-laws according to its strict legal sense, and that the occupier of a house is rated for it, although he has a mere chattel interest in it. The term "personal property" is also used in a restricted sense; it denotes stock in trade, and such things as are not at all of the nature of reality, and excludes chattels real. The assessment is laid in respect of the revenue or annual profit of the property rated, whether real or personal. Such property therefore as is incapable of yielding profit is not rateable. The assessment upon land and houses, &c. is calculated upon an estimate of their net annual value, which is defined to be the rent at which they would let from year to year, free of all tenant's rates and taxes, and tithe commutation rent-charge, if any, and deducting the probable average of annual costs of repairs, insurance, and any other expenses which may be necessary to maintain the premises in a state to command such rent. Personal property was not rated unless it had, as it were, a local existence; and therefore neither stock in the funds nor money was rateable. Furniture also was exempted, because it yielded no profit. In practice the only kind of personal property ever rated, and that in very few places, was stock in trade and ships. The rating of this species of property was attended with many disadvantages. The rate was to be made on the profit, which was defined to be not the whole profit, but the excess after payment of debts. Thus it was nearly impossible to ascertain the rateable amount of such property, and the proprietors might always evade the tax by residing out of the parish. So long however as per-

sonal property was rateable by law, the omission of it in the rate was a ground of appeal, because all persons liable are to be rated equally according to their ability. The inconvenience attending this state of things induced the legislature (by the 3 & 4 Vict. c. 83) to suspend the enactments which authorised the rating of inhabitants in respect of stock in trade, and by subsequent acts to continue the exemption from the liability to be rated in respect of such property until the 1st October, 1846.

It is unnecessary to make any detailed remarks on titles and other property which, by the statute of Elizabeth, are expressly made chargeable.

If a parish is unable to furnish a sufficient sum for the maintenance of its poor, any other parish in the same hundred, with the sanction of two justices, or in any other part of the county, with the sanction of the justices at quarter-sessions, may be called upon to assist the less solvent parish. This is called rating parishes in aid.

The overseers are to collect the rate from the persons rated. If a person rated do not pay when called upon, the overseers may obtain a summons from two justices, requiring him to show cause why a warrant should not issue to levy the rate by distress and sale of his goods; and if no sufficient cause is shown, the payment is enforced accordingly. The party so summoned may show for cause that the rate itself is void, or that he is not liable; he may also, with the consent of the overseers, or Board of Guardians, be excused, if it appear that he is unable to pay through poverty. He may also appeal against the rate, and notice of appeal deprives the magistrates of their jurisdiction to distrain until the appeal is decided, unless the objection is solely on the ground of overcharge, in which case the warrant may issue for such a sum as the property was rated at in the last valid rate. The appeal against the rate on the ground of inequality, unfairness, or incorrectness in the valuation of the property rated, may be to justices at *petty-sessions*, from whose decision a *second appeal* lies to the general quarter-sessions. The appeal, on the above

grounds, may also be taken to the quarter-sessions in the first instance. If the objection be to the principle of the rate itself, or it is intended to dispute the liability of the property to be rated, the appeal lies to the quarter-sessions only. In all these cases of appeal, notice of appeal and of the precise objections to the rate must be given to the parish-officers, and also to any rated inhabitants that may be interested in opposing the appellant, as, for instance, where his ground of complaint is that they have been underrated.

The overseers, who in some parishes act under the direction of a select vestry, and are assisted by assistant overseers, are to apply the poor-rate to the relief of the poor of their parish. The poor of the parish are, in one sense, all those who happen to be in the parish at the time of their being in distress, for the parish in which they happen to be is bound to afford such paupers immediate, or, as it is called, casual relief. But if the same parish were bound also to afford continued relief to, or permanently to maintain, all the destitute who should come within it, the burden of supporting the poor might press very unequally upon different parishes. Paupers would then, influenced by their own fancy, or instigated to exonerate some other parish, have the power of fastening themselves for ever on any particular parish, or of roaming at pleasure from one parish to another in unrestricted vagrancy. The 13 & 14 Car. II. c. 12, was passed to obviate these evils, and is the foundation of the present law which determines the parish that a pauper belongs to, and gives the power of removing him to it. This law is called the law of Settlement. The statute enables two justices, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of the peace, within forty days after a person coming to settle there, in any tenement under the yearly value of 10*l.*, by their warrant to remove such person to the parish where he was "last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least." Later statutes have

ally modified the heads of the settlements here enumerated, and have added others; they have also made a pauper removable, until he has become chargeable to the foreign parish by receiving of from it, either in person or through hands of his wife or children.

The following are the settlements that existed at the passing of the Poor-Law Amendment Act:—settlement by birth, marriage, hiring and service, apprenticeship, renting a tenement, estate, &c., payment of rates. Settlements are divided into two general classes; viz. first, natural or derivative settlements, as by birth, parentage, or marriage, to the perfection of which residence in the parish is unnecessary; secondly, acquired settlements, including the remaining settlements above mentioned, and to these residence for forty days in the parish is necessary. The following were the modes of acquiring various settlements which have been enumerated:—1. Settlement by birth.—

Order that children may not be separated from their parents, the settlement of the father during his life, and the settlement of the mother after his death, is a settlement of the children. But legitimate children who have no known settlement are settled in the place of their birth; so also are illegitimate children, or they can derive neither settlement nor any thing else from their parents. Children however, during the age of nature, which continues till they are seven years of age, must not be separated from their parents, and are therefore to be supported in the parish where their parents happen to be, at the expense of the parish of their birth settlement. 2. Settlement by parentage.—The settlement of the father, or, if he have none, the residence settlement of the mother, is communicated to legitimate unemancipated children. After their father's death their settlement shifts with that of the widow, until she marry again, in which case the settlement of her new husband is not communicated to them. A child is said to be unemancipated so long as he forms part of the parents' family. A child is emancipated when

he gains a settlement of his own, or, being of the age of twenty-one, lives apart from and independently of the parent, or contracts some relation inconsistent with his continuing a subordinate member of the parent's family, as by marrying or enlisting as a soldier. Any settlement of the parent acquired after the child's emancipation is not communicated to him. 3. Settlement by marriage.—To prevent the separation of husband and wife, the settlement of the husband is communicated to the wife; she can acquire no settlement during marriage; and if he have no settlement, she cannot be separated from him by her removal to her maiden settlement. 4. Settlement by hiring and service is acquired by a person unmarried, and without unemancipated children, hiring himself for a year into service, abiding for a year in the same service, and residing for forty days in any parish within the year, and with a view to the service. A general hiring, that is, a hiring where nothing is said as to the duration of the contract, is considered a hiring for a year. The service for a year need not be wholly under the hiring for a year, it is sufficient if part of the service be under such hiring; the residue may be either under another hiring, or under no hiring at all. The settlement is gained in the parish where the servant last completes the residence of forty days—the forty days need not be consecutive days; if a servant reside thirty-nine days in parish A, then forty days in parish B, and finally another day in A, A, where he last completed a residence of forty days, will be the place of his settlement. All the forty days must be within the compass of a single year, but it is sufficient if the residence for any part of the forty days be under the yearly hiring. 5. Settlement by apprenticeship is gained in the parish where a person bound by deed as an apprentice last completes a residence of forty days in his character of apprentice. No service is required, but the apprentice during the necessary period of residence must be under his master's control. 6. Settlement by renting a tenement is acquired by hiring and actually occupying a tenement at the rent of at least 10*l.* a year, payment of

being of the age of twenty-one, lives apart from and independently of the parent, or contracts some relation inconsistent with his continuing a subordinate member of the parent's family, as by marrying or enlisting as a soldier. Any settlement of the parent acquired after the child's emancipation is not communicated to him. 3. Settlement by marriage.—To prevent the separation of husband and wife, the settlement of the husband is communicated to the wife; she can acquire no settlement during marriage; and if he have no settlement, she cannot be separated from him by her removal to her maiden settlement. 4. Settlement by hiring and service is acquired by a person unmarried, and without unemancipated children, hiring himself for a year into service, abiding for a year in the same service, and residing for forty days in any parish within the year, and with a view to the service. A general hiring, that is, a hiring where nothing is said as to the duration of the contract, is considered a hiring for a year. The service for a year need not be wholly under the hiring for a year, it is sufficient if part of the service be under such hiring; the residue may be either under another hiring, or under no hiring at all. The settlement is gained in the parish where the servant last completes the residence of forty days—the forty days need not be consecutive days; if a servant reside thirty-nine days in parish A, then forty days in parish B, and finally another day in A, A, where he last completed a residence of forty days, will be the place of his settlement. All the forty days must be within the compass of a single year, but it is sufficient if the residence for any part of the forty days be under the yearly hiring. 5. Settlement by apprenticeship is gained in the parish where a person bound by deed as an apprentice last completes a residence of forty days in his character of apprentice. No service is required, but the apprentice during the necessary period of residence must be under his master's control. 6. Settlement by renting a tenement is acquired by hiring and actually occupying a tenement at the rent of at least 10*l.* a year, payment of

rent to that amount, and residence for forty days in the parish where the tenement is. By actual occupation is meant that no part of the tenement must be underlet. 7. Settlement by estate is gained by the possession of any freehold, copyhold, or leasehold property, and residence for forty days in the parish where the estate lies. If the estate come to a party in any way except by purchase, the value of the estate is immaterial; but a purchased estate confers no settlement if the price given was under 30*l*. But a person residing on his estate, whatever may be its value, is by Magna Charta irremovable from it while so residing, although he may have gained no settlement in respect of it. 8. Settlement by office is gained by executing any public office in the parish, such as the office of constable, sexton, &c. for a year, and residing there forty days. The office need not be of a parochial nature, but it must be at least an annual office. 9. Settlement by payment of rates. In order to acquire this settlement a person must have been rated to and have paid the public taxes of a parish, in respect of a tenement hired at a rent of 10*l*. a year, and have paid that amount of rent, and resided forty days in the parish of the tenement. This head of settlement therefore includes all the requisites of settlement by renting a tenement, except the requisite of actual occupation.

All persons whatsoever, whether natural born subjects of England and Wales, Scotchmen, Irishmen, or foreigners, may gain a settlement in this country. A chargeable pauper is to be removed to the place where he last acquired a settlement. It is often very difficult to find out the place of such last settlement; this is so more especially in cases of settlement by hiring and service and apprenticeship, where the residence, being unconnected with anything of a fixed nature, as a tenement or office in any particular parish, may be continually shifting, the settlement consequently shifting with it, until the last day of the service or apprenticeship. *Paupers who have no settlement must be maintained by the parish in which they happen to be, as casual poor, unless they*

were born in Scotland or in the islands of Man, Jersey, or in which case they are to be taken a pass-warrant of two justices to country. When a pauper is chargeable, and it is sought to remove him, he is taken before two justices to inquire as to his place of settlement; if satisfied, upon his examination and other evidence as may be laid before them, to make an order for his removal. The parish to which he is removed disputes its liability by appeal to quarter-sessions, when the order will be quashed, unless it appears that the pauper is settled in the appellary parish.

The Poor-Law Amendment Act, Wm. IV. c. 76 has made no alteration in the law respecting the rateability of property or the mode of collecting the poor-rates. The Act does not apply itself to the poor until collected; it then takes effect for the purpose of securing a better distribution of it. To this end the action of relief to the poor in England and Wales is subject to the control of the three poor-law commissioners. In parishes or unions where guardians or a select vestry, regulated solely by such guardians or by their order, unless in urgent distress. In these cases a pauper is bound to give temporary articles of absolute necessity, such as money, and, if he refuse, he is required to do so by a magistrate on disobedience to which is visited the penalty of 5*l*. In parishes where guardians or select vestry, the management and relief of the poor is committed to the overseers, subject to the control of the commissioners. But, with the above stated, the task of relief to the poor is wholly withdrawn from these officers, from ignorance of the motives, having been generally incompetent to the discharge of such a duty. They are still however left with the making and collecting the poor-rate, which they are to pay to those who have the distribution. The general discretionary power of magistrates formerly exercised in the granting of relief is also withdrawn. But a magistrate may still order the

called for by sudden and dangerous cases, and two magistrates may order the adult persons who from age or infirmity are unable to work, without forcing them to reside in the workhouse, and to also infirm persons cannot be sent out of the workhouse, unless with sanction of the commissioners. In short, the wants of the poor are as fully supplied as before the Act, but the fear of administering relief is no longer, by subjecting the applicants for it to the discipline of a workhouse and to its inmates, that the condition of a poor, living upon the parish fund, is raised, in point of comfort, below that of the labourer. Thus a ready test is lost to distinguish real and pretended need, and a powerful incentive to idleness is held out to all who can find employment.

The means also of obtaining employment are increased by enlarging the law for the poor man's labour. This is the result of a relaxation in the law of tithes, and particularly of settlement being and service. The old law had found it obstruct the free circulation of labour by confining the poor to their parishes. The labourer himself, attached to old scenes and associations, was often unwilling to engage off for a year in a strange parish, by accepting a settlement there, would mean, at some future time, a painful separation from home: therefore, on the other hand, had an equally strong objection to hire a strange labourer as to burden his parish with a new settler.

The Poor-Law Amendment Act is meant by hiring and service cannot be gained for the future; but the Act does not interfere materially with settlements previously acquired. Settlements lost and by apprenticeship in the sea or to a fisherman can no longer be lost. Settlement by renting a tenement clogged with the additional qualification that the occupier must have been used in the poor-rate, and paid the rate for one year. Settlement by estate, or any other settlement, when once established, need no endure till it was superseded by some new settlement; but now

it is converted to a temporary settlement, and to be retained so long only as the proprietor shall live within ten miles of the estate. Settlements by marriage and by payment of rates are untouched.

Settlement by parentage and settlement by birth are both affected to this extent, that illegitimate children born after the passing of the Act are to follow the settlement of their mother, until the age of sixteen, or until they acquire a settlement in their own right; instead of taking, as formerly, the settlement of the place of their birth. The effect of this change in the law is that an unmarried woman, whose pregnancy in itself made her chargeable, is no longer hunted from the parish in which she happens to be, in order that the parish may not, by the birth of the child therein, be permanently charged with its maintenance.

The old law of settlement was full of legal difficulties and refinements, and the effect of the change in the law has been to relieve parishes from a frightful mass of litigation.

A great change also has been introduced in the general law of bastardy, which is stated under the article *BASTARDY*.

Any person who marries a woman having children, whether legitimate or illegitimate, is liable to maintain them until they attain the age of sixteen, or until the death of the mother.

(Blackstone, *Comm.* 329; Nolan's *Poor Laws*; Burn's *Justice*, "Poor;" and Gambier *On the Law of Settlement*.)

Until the passing of the Act 1 & 2 Victoria, c. 56, which received the royal assent on the 31st July, 1838, no provision had been made by law for the relief of the helpless or the destitute in Ireland. Relief is confined to the "destitute" poor, who must be relieved in workhouses. Other poor persons may be assisted to emigrate.

Statistics.—The salaries and expenses of the commissioners for carrying into execution the poor-law acts in England and Ireland amounted to about 52,000*l.* in 1845. The chief English commissioner receives a salary of 2500*l.* a year, and the other commissioners 2000*l.* The salary of the chief secretary is 1250*l.*, and the two assistant-secretaries receive

760*l.* and 660*l.* according to seniority. The salary of the assistant-commissioners is 760*l.* a year, with allowances for travelling expenses. Before the business of forming the unions was completed, the number of assistant-commissioners acting in England was twenty-one, but the number is now restricted to nine, under the act 7 & 8 Vict. c. 101. A chief commissioner is appointed for Ireland, who sits in Dublin, and there is a staff of assistant-commissioners for Ireland.

The average sum expended for the relief of the poor in the three years 1783-4 and 5, was 1,912,241*l.*; and in the following years was as under:—

		Proportion per head on total Population.
1801	£4,017,871	9s. 1d.
1811	6,056,105	13 1
1821	6,959,249	10 7
1831	6,798,888	9 9
1841	4,760,929	6 2

The sums expended for relief for a year or two before the passing of the Poor-Law Amendment Act and in subsequent years are shown in the following table:—

£	£
1832 7,036,968	1839 4,421,714
1833 6,790,799	1840 4,576,965
1834 6,317,254	1841 4,760,929
1835 5,526,418	1842 4,911,498
1836 4,717,630	1843 5,208,027
1837 4,044,741	1844 4,976,093
1838 4,123,604	

A great saving has also been effected in irregular and illegal expenses in consequence of the appointment of auditors for the different Unions.

Number of in-door and out-door paupers relieved, including children, during the following years ending Easter or Lady-day:—

	Paupers.	Proportion per cent. to Population.
1803	1,040,716	12
1815	1,319,851	13
1842	1,429,356	9
1843	1,546,390	9.7
1844	1,477,561	9.3

Number of in-door paupers in 1844, 290,818; out-door 1,246,743. "Of the million and a half of persons thus relieved, a large proportion were permanent pau-

pers, but the number of new cases in other three quarters may be safely estimated at half a million; so that number of persons relieved in Eng and Wales, in the course of the year 1844, may be taken at about millions, or nearly one-eighth part of actual population. In other words, one person in eight, through the population, received relief from the rate at some time during that year (Eleventh Report of the Poor-Law Commissioners.) It should be recollected, however, that if a person ceases to receive relief and again applies for it he is relieved twice over; but to what extent is done cannot be ascertained from Poor-Law Reports.

The expenditure of 585 Unions in England and Wales for 1843-4 was £700,000. In-maintenance . . . £700,000 Out-relief . . . 2,720,000 Establishment charges and salaries . . . 70,000 Workhouse loans repaid . . . 18,000 Other charges connected with relief

Total . . . 4,370,000

The number of paupers relieved in Unions in Ireland for the quarter ending 29th September, 1844, was 64,487. The average number of days during which each pauper was relieved was 92. The total number of Unions in Ireland is 130.

POOR LAWS, SCOTLAND. The foundation of the Old Poor Law in Scotland, was the act of parliament c. 74, which in so many respects resembled the celebrated English act of the fourteenth of Elizabeth, passed a few years earlier, as to have been considered a mere adaptation from it. The Scottish act, however, fell short of English in the one important part of not providing for the care of the bodied. By this old act, a settlement was acquired by birth, and one established could not be changed by a seven years' industrial residence in another parish. By the act 1672, this period was shortened to three years. The method of administering the relief, which arose partly out of the terms

the old acts, partly out of custom, and partly from the directions given in these statutes by the judgments of the courts, was as follows:—In the rural parishes, the “*kirk sessions*,” or lowest ecclesiastical judicatories, consisting of the parish clergyman and certain elders, shared the management with the “*heritors*,” or rated landed proprietors; but it became customary for the latter body to interest themselves solely in the voting and levying of the rate, leaving its distribution and the management of the poor to the former. In those municipal corporations holding rank as royal burghs, the assessment and management lay with the corporate authorities. The funds for the relief of the poor were of two kinds. The collections at church doors, along with certain fees and alms-donations, constituting the one department; and rates assessed on the parish, or a substitute voluntarily paid instead of an assessment, the other. Of the sums collected at the church doors only a half went to the regular relief of those legally entitled to relief; the other became a fund for general charitable purposes at the command of the kirk session. In many cases there was no assessment, and the regular practice came to be, that if the miscellaneous sources were insufficient for the relief of the poor, the heritors and session in a country parish, or the magistrates in a town parish, might levy a rate. It became a common practice for the parties chiefly interested to agree to a “*voluntary assessment*,” for the purpose of postponing the imposition of a fixed legal rate. When an assessment was imposed, it became a rule that one half of it should be levied on the proprietors of land, in respect of their land; the other on householders, in respect of their “*means and substance*,” or their incomes so far as not derived from land. The adjustment of the rating was the ground of much dispute, and different parishes followed very distinct methods in practice.

For a considerable period, the Scottish system was very favourably received by political economists, who saw the country to be a comparatively sound moral con-

dition, with a parsimonious poor law, while the lavish system of England seemed to promote profligacy and idleness. But from the time when these doctrines were first promulgated, to the completion of the great change of the English poor law, a vast internal alteration had taken place in the social economy of Scotland. The comparative low rate of wages, attracting manufacturing capital from England, had caused a more than average migration of the rural labourers to the manufacturing districts, and a peculiarly rapid increase of the city population. It was found that with these complicated materials, the simple parochial system, adapted to a state of society where each man watched over the interests and the conduct of his neighbour, was incapable of grappling. It was found that even for poor country districts the system was unsuitable, because, though still far behind the English system in profusion, the town administrators were compelled by the voice of public opinion to become more liberal in their dispensations, while the managers of the country parishes not subject to the same influence, kept down the allowances, and thus gave the poor an inducement to endeavour to obtain a settlement by three years’ industrial residence in the cities. Dr. Chalmers was the great champion of the old system. With the assistance of some enthusiastic followers, he organised the administration of a parish in the poorer parts of Glasgow, as a demonstration of the efficiency of which the system was capable. It was a very pleasing picture, but the public soon felt that the success with which one energetic individual and his enthusiastic followers might voluntarily perform the duties generally exacted by legal compulsion, was no sufficient ground for believing that the rest of the community can be at all times and in all places depended upon for the performance of onerous public services without the coercion of law.

The public were first awakened to the imperfections of the Scottish poor law by Dr. W. P. Alison, a physician in Edinburgh, and professor of the practice of medicine in the university. Having frequently administered professional ser-

vices to the poorer classes, he showed from his own experience that the utter inadequacy of the provision afforded to those who, by inability to work, or bad seasons, or revolutions in trade, were reduced to want, was an extensive cause of disease, vice, and misery. The city population speedily answered to this appeal, and associations were formed, and inquiries made in various directions. It was shown that the amount expended on the relief of the poor in Scotland amounted to little more than a sixth part of the sum distributed throughout an equal population in England by the economised poor law. In England, the expense of supporting the poor amounted to 6s. 10½d. per head of the population; in Scotland, to 1s. 2½d. In some of the Highland parishes, whence the most destitute objects emigrated over the rest of the country, the allowances were ludicrously small; and a Report made to the General Assembly of the Church of Scotland in 1839, enumerated instances where sums averaging from 3s. to 1s. yearly were solemnly awarded to destitute people, as the provision which the poor law made for their wants. In the mean time, the discussion of these matters had a tendency gradually to increase the amount of the provision for the poor. The practice of assessments made considerable progress, and a return to parliament in 1843 shows that between 1836 and 1841 the sums raised by assessment had increased from £89,101 to £128,858; while the sums raised by voluntary assessment had risen from £15,929 to £22,385. A commission was at last appointed to inquire into the whole state of the subject, and after hearing much evidence, they presented a Report, accompanied by a voluminous appendix, in 1843. The amendments proposed in this Report were supposed to be of a somewhat narrow nature; the country expressed dissatisfaction with them; and in 1845 a measure was passed embodying alterations considerably more extensive.

By this act, 8 & 9 Vict. c. 83, a board of supervision is appointed, consisting of persons connected with the municipal bodies and the administration

of justice in Scotland, with one salaried member, who gives constant personal attendance. The office of the board is in Edinburgh. This board is endowed with ample means for ascertaining, in all parts of the country, the condition of the poor, and the method in which the system of relief is administered. The board has, however, no directory or prohibitory control over the proceedings of the local boards. These bodies are, however, reorganised by the act. In the rural parishes where there is an assessment, the local board is to consist of landowners to the extent of £50 annual value, the kirk session, and certain elected representatives of the other rate-payers, according to the number fixed by the board of supervision. In city parishes, the boards are each to consist of four persons named by the magistrates, deputies not exceeding four from each kirk session in the city, and certain elected persons according to a number and qualification fixed by the board of supervision. In parishes where there is no assessment, the management is to continue under the old system. There is thus in this act no machinery for levying or exacting a rate for the poor, unless in those parishes where the persons more immediately concerned agree to such a measure. It is held, however, that the facilities which the statute gives the poor for exacting from the respective parochial authorities the relief to which they are entitled, will render it necessary to put more extensive funds at the disposal of the distributors of relief, and this can only be accomplished through the system of assessment. When persons apply for relief, it is provided that though they have no settlement, if the claim would be just in the case of their having one in the parish where it is made, substantial aid must be afforded them till it is determined what parish is liable. When relief is refused, the applicant may apply to the sheriff, who may grant an order for temporary relief, and then hear parties, and decide whether the applicant is or is not entitled to relief. In this form, however, neither the sheriff nor any other judge can decide on the *adequacy* of relief. The initial step to any judicial

it against the amount of the relief lost, is by an application to the board of guardians, and on that body reporting unanimously, the applicant is to be on the poor-roll of the court of exchequer, where he has the privilege of taxation being discussed gratis. By this act, provision is made for medical disease and medicines, being part of system of pauper relief, and for the education of pauper children. It is proper, that for the purposes of the act, there may be united into "combinations." By a special clause, nothing in it is to be construed as entitling the pauper to relief, and their claim is left in the state of doubt in which it was before the passing of the act, discharging their wives and children made liable to punishment as vagabonds, a provision which it is hoped may be a remedy to a defect which has characterized the law of Scotland—absence of any means by which poor wives can make effectual claims on their husbands for maintenance to themselves and their children, without a law action in the court of session. By the new act, a new and more specific mode of apportioning the assessment between landed and other property has been attempted to be established, but this failure is already a fruitful source of ill and litigation. The time necessary to acquire an industrial settlement has been raised from three to five years.

DOOR'S RATE. [POOR LAWS AND FLEETING.]

OPPE, POPERY. [CATHOLIC REFORM.]

POPULATION. [CENSUS.]

POPULATION. The circumstances which determine the proportion of the population to the area of any given country are the first elements which we must take the account in considering their condition. In the lowest stage of existence, in which men depend on hunting and fishing for a subsistence, are mastered over an immense surplus in order to obtain food; and as the habits which they pursue become scarce one part, they remove to another, till the numbers of a tribe may not be one individual to a square mile, &c. &c.

the difficulties of preserving subsistence are often so great, that frequent hunger and occasional famines have always characterized the savage state. Many of the tribes of North America which live near and among the Rocky Mountains are actual examples of this precarious mode of existence; and the white men who hunt the fur-bearing animals in the same regions are subjected to those inconveniences of a savage life. The purely pastoral state admits of a greater relative proportion of population; but the necessity of frequent removal from place to place in search of pasture does not admit of this proportion surpassing a certain limit, which is determined by the capabilities of the uncultivated land to feed their flocks and herds. If agriculture be resorted to, and the occupation of the shepherd be exchanged for that of the husbandman, the same tract when cultivated will sustain a larger population. In the early stages of agriculture, the implements of labour are few and imperfect; the clothing of each family is the produce of household industry; and the number of carpenters, blacksmiths, and other artificers is small. When a more minute division of employments takes place, and the husbandman is solely engaged in raising food, while others are employed in making clothing and supplying all the other wants of the population, the labour of the community becomes much more productive, and food being raised in greater quantities, this change is followed by an increase of the population; and when machines for abridging human labour are introduced, a further stimulus is given to the increase of population. An intelligent, healthy, and industrious population, who possess a good soil and abundance of mineral wealth, are enabled by improvements in machinery and labour-saving contrivances, not only to supply their own wants, but those of other countries in a less advanced state. When a country has succeeded in introducing the products of an extensively diversified industry into the markets of the world, the population may be continually increased, with a continual increase in the comforts which it enjoys. In the savage state, a tract of several hundred square

miles is overstocked by as many individuals: in nations which have reached the highest degree of civilization hitherto known, the population is as great to one single square mile.

Under all the diversity of circumstances in which the inhabitants of different parts of the world exist, their numbers are limited by the means of subsistence. If the population increases faster than the food for their support, poverty and misery ensue, and death thins their numbers, and brings them to a level with the means of subsistence. This effect may take place whether the population be one to a square mile or several hundreds. Hence the proportion of births, marriages, and deaths to the population, is as important an element in ascertaining the condition of the population of any country as the proportion of their numbers to each square mile.

The evils which arise when the population increases more rapidly than the means of subsistence had not escaped the notice of two of the most eminent writers of antiquity, Plato and Aristotle. (Plato, *Laws*, v., and *Republic*, v.; Aristotle, *Politik*, vii. 16.) In later times this truth had been seen by Dr. Franklin, Sir James Stewart (*Treatise on Pol. Econ.*, book 1), Mr. Townsend (*Essay on the Poor-Laws*), and other English and French economists. Their views attracted little attention at the time when they wrote. In England especially, during the eighteenth century, a false opinion prevailed that the population was diminishing; and subsequently the demand for men during the long war with France rendered the evils of a redundant population almost imaginary in general estimation. The decennial censuses of the population during the present century, the transition from war to peace, and the commercial embarrassments and periods of public distress which have been experienced, have given us the means of forming a better judgment on such matters; and the writings of the late Mr. Malthus have powerfully aided in producing correct views upon the questions of population. His 'Essay on the Principle of Population' was first published anonymously in 1798. This work was suggested by a paper in Godwin's 'En-

quirer,' and the author's object was to apply the principle of population in considering the schemes of human peopling and other speculations on a subject to which the French revolution had given birth. Hume (*Populousness of Nations*), Wallace (*Dissertation on Numbers of Mankind in Antient and Modern Times*), and Dr. Price's works of more recent date, were the authorities from whom Mr. Malthus deduced the main principle of his Essay. It appeared a second edition, to which Malthus affixed his name, and might be considered almost a new work. The author had in the interval directed his attention to an historical examination of the effect of the principle of population on the past and present state of society, and the subject was for the first time treated in a comprehensive and systematic manner. A third and fourth edition appeared a few years afterwards. The fifth edition, containing several additional chapters, was published in 1817. The sixth and present edition, which contains few alterations, was published in 1826. The title of the work as it at present stands is as follows:—'An Essay on the Principle of Population, or a View of its Past and Present Effects on Human Prosperity, with an Inquiry into our Resources respecting the future removal or mitigation of the evils which it occasions.' The following is a brief summary of the leading principles:—Mr Malthus's positions are—that population, when unchecked, goes on doubling itself every twenty-five years, or increases in an arithmetical ratio; while the means of subsistence, under the most favorable circumstances, could not be made to increase faster than in an arithmetical ratio. That is, the human species may increase as the numbers 1, 2, 4, 8, 16, 32; the increase of food would only go on in the following ratio: 1, 2, 3, 4. Thus if all the fertile land of a country is occupied, the yearly increase of produce must depend upon improved methods of cultivation; and neither science nor capital applied to land could create an increased amount of produce beyond a certain limit. But the increase of population would ever go on with un-

vigour, if food could be obtained, and a population of twenty millions would possess as much the inherent power of doubling itself as a population of twenty thousand. Population however cannot increase beyond the lowest nourishment capable of supporting life; and therefore the difficulty of obtaining food forms the primary check on the increase of population, although it does not usually present itself as the immediate check, but operates upon mankind in the various forms of misery or the fear of misery. The immediate check may be either *preventive* or *positive*; the preventive is such as war and pestilence impose, and the positive consists of every form by which vice and misery shorten human life. Thus a man may restrain the natural appetite which directs him to an early attachment for his woman, from the fear of being unable to preserve his children from poverty, or in not having it in his power to bestow upon them the same advantages of education which he had himself enjoyed. Such a restraint may be practised for a temporary period or through life, and though it is a deduction from the sum of human happiness, the evil is less than that which results from the positive checks to population, namely, unwholesome occupations, severe labour, and exposure to the seasons, extreme poverty, bad nursing of children, excesses of all kinds, the whole train of common diseases and epidemics, wars, plagues, and famines.

The preventive and the positive checks which form the obstacles to the increase of population are resolvable into, 1, moral restraint; 2, vice; 3, misery. Moral restraint (considered as one of the checks to population for the first time in the second edition, 1803) is the prudential restraint from marriage, with a conduct strictly moral during the period of this restraint. Promiscuous intercourse, violation of the marriage bed, and improper attempts to conceal the consequences of irregular connections, are included under the head of Vice. Those positive checks which appear to arise unavoidably from the laws of nature may be called *exclusively Misery*. Such are the checks which expense the superior power of

population, and keep it on a level with the means of subsistence.

The '*Essay on Population*' places the question in every light which can elucidate the truth. It is divided into four books, the first of which notices the checks to population in the less civilized parts of the world and in past times. The second book passes in review the different states of modern Europe (most of which Mr. Malthus visited in the interval preceding the publication of the second edition), and he points out the checks to population which prevailed in each. Chapter xi. of this book is '*On the Fruitfulness of Marriages*,' chapter xii. '*On the Effects of Epilemias on Registers of Births, Deaths, and Marriages*,' and chapter xiii. is devoted to '*General Deductions from the preceding view of Society*.' The third book comprehends an examination of the different systems or expedients which have been proposed or have prevailed in society, as they affect the evils arising from the principle of population in the first three chapters; the systems of equality proposed by Wallace, Condorcet, Godwin, &c. are considered. Several chapters are devoted to the consideration of poor-laws; corn-laws (first in connection with bounties on exportation, and secondly under restrictions on importation); the agricultural system; the commercial system; and the combination of both. The last two chapters are, '*Of increasing Wealth as it affects the Condition of the Poor*,' and a summary containing '*General Observations*.' The fourth book treats of '*Our Future Prospects respecting the Removal or Mitigation of the Evils arising from the Principle of Population*.' Chapter i. treats '*Of Moral Restraint and our Obligations to practice this Virtue*.' Chapter ii. is '*Of the Effects which would result to Society from the prevalence of Moral Restraint*.' Chapter iii. is '*Of the only efficient Mode of improving the Condition of the Poor*.' And the last chapter is '*Of our rational Expectations respecting the Future Improvement of Society*.'

Perhaps no author has been more exposed to vulgar abuse than Mr. Malthus. He was accused of barba-

and represented as the enemy of the poorer classes, whereas no man was more benevolent in his views; and the earnestness with which he engaged in his work 'On Population' arose from his desire to diminish the evils of poverty. His mind was philosophic, practical, and sagacious; his habits, manners, and tastes, simple and unassuming; his whole character gentle and placid. The last edition of his 'Principles of Political Economy' contains an interesting memoir of his life and writings by Dr. Otter, late Bishop of Chichester, who had known him intimately for half a century. A list of Mr. Malthus's works and writings is given in page 42 of this 'Memoir'; it is a matter of regret that they have never been published in a collected form. Several of his most valuable productions appeared in the Edinburgh and Quarterly Reviews. Mr. Malthus was born at Albury, near Guildford, in 1766; became a fellow of Jesus College, Cambridge, and entered holy orders; he afterwards married. In 1804 he was appointed Professor of History and Political Economy at the East India College, Haileybury, the duties of which he fulfilled to the time of his death, in December, 1834. Mr. Malthus was a Fellow of the Royal Society and member of the National Institute of France. It is not creditable to those who had the distribution of ecclesiastical patronage, that Mr. Malthus never held any preferment in the church. From this brief notice of the individual whose name is so intimately identified with the theory of population, to the elucidation of which the best part of his life was devoted, we return to the subject of the present article.

Although circumstances may sometimes occur in which the tendency of population to outstrip the means of subsistence may be counteracted, and food may for a time increase faster than population, yet this only gives an impulse to population, and the former proportion is quickly re-established, provided no improvement takes place either in the prudential habits of the people or in the elevation of their tastes and desires. *The poverty and misery which are observable among the lower classes of the*

people in every country can in a degree be accounted for by a reference to the principle of population. evident, for example, that the wages depends, for one of its elements, on the proportion between population and the means of employment, other words capital; and that any variation in either directly affects wages. population has increased while the means for employing labour have remained stationary, the competition of labourers cause the rate of wages to decline. the other hand, capital has increased faster than population, or capital has been concentrated on any given spot more than population, wages will rise in the former case, and in the latter higher than in other places where the same thing has not taken place. occasionally in some parts of the United States so many emigrants with their families will flock to a single spot, that the demand of carpenters, tailors, and others, for labour is in immediate demand, and wages come very high compared with any other place that has not been recently visited. The tendency of population to increase is the same under all circumstances; but this is not the case with capital; the proportion to the capital already employed, the difficulty of adding more becomes greater, that is, the field for employment of capital becomes less extensive. Under such circumstances wages would have a constant tendency to fall, if the checks to population did not interpose; but it depends upon the prudence of the people themselves whether the level is maintained by vice and misery, or by habits of prudential restraint, which, if adopted, would certainly secure to the people a fair proportion of the necessaries of life.

The great problem of society is to maintain the most beneficial proportion between population and food—"to unite the two grand desiderata, a great actual population and a state of society in which poverty and dependence are existentially but little known." Disasters such as the evils resulting from the present increase of population may at first sight seem to be capable of mitigation, but the principle may even be regarded as

great springs of human improvement—the parent of invention and the stimulus to exertion—which preserves us from that state of imbecility and indolence into which it would fall if not checked and onward by some extraordinary power. It is the interest of all members of society, and is particularly incumbent upon those who have the power, to use their best exertions to elevate the habits, the intellect, and moral feelings of the people; by this means to render every successive material improvement conducive to the happiness of society. If this be done as much wretchedness as we find in the lower stages of society may be met with the highest efforts of art, science, and the greatest perfection in the processes of industry. Even the introduction of vaccination or any similar means of diminishing mortality is of no avail provided the number of marriages continue the same without any corresponding increase of the resources of society, and the average mortality will not be diminished, but disease will be transferred to other forms. Every improvement which tends to increase the quantity of human food, and every industry which enriches society by cheapening the processes for obtaining the necessities of life, should be accompanied by a corresponding advance in the intellectual and moral character of a nation, in order to secure all the advantages which these improvements are calculated to offer.

Malthus's theory is now generally admitted as the true exposition of the principle of population. Many of the objections that have been urged against it are hardly worthy of notice. Some content to quote the Scripture command, "Increase and multiply," forgetful of the moral obligations which are implied in connection with it. Others have asserted that they have discovered a natural law of fecundity which coincides with the fluctuating circumstances of society. Dr. Price, Mr. Godwin, and Sadler entertained this notion. Mr. Senior's reasons for not replying to Godwin's work are stated in the appendix to the sixth edition of the *'Essay on Population.'* The fallacies of Mr.

Sadler's work are most ably exposed in the *'Edinburgh Review,'* No. 102. Mr. Senior is the only economist of any distinction who has objected to the theory of Mr. Malthus. He contends, in his *'Two Lectures on Population,'* for the doctrine that "the means of subsistence have a natural tendency to increase faster than population." The appendix to these *'Lectures'* contains a correspondence between Mr. Malthus and Mr. Senior on their respective views: it exhibits the latest views of Mr. Malthus, though, after forty years' anxious reflection on the subject, he had no change to make in his opinions.

The latest works on population are, *'The Principles of Population, and their Connection with Human Happiness,'* by Archibald Alison, Esq., published in 1840; and *'Over-Population and its Remedy; or, an Inquiry into the Extent and Causes of the Distress prevailing among the Labouring Classes, and into the Means of Remedying it,'* by W. T. Thornton (1846).

The disputes about the principle of population, like those which have arisen in many other questions of a like kind, are mainly owing to the ambiguity of language: in fact they are very little more than questions about the consistent use of words. If we analyse the proposition of Mr. Senior, it will appear that it is not easy to conceive with clearness the meaning of its terms. The words "means of subsistence" may signify the subsistence which is obtained from spontaneous products of the earth, and from the natural increase of animals. The products of the earth may be said to have a natural tendency to increase, or naturally to increase, or rather to be produced; and it may, for argument's sake, be admitted, though it is not true, that animals have the same kind of natural tendency to increase, or are in like manner naturally increased, or rather are produced. There is no other natural tendency to increase, or natural increase, or natural produce, that we can conceive, if the word "natural" is to have its ordinary acceptation. The increase of population, or the produce of new population, may be said to be natural, exactly in the same sense in which the

increase or produce of animals generally may be called natural. If then this should be the sense of the word "natural," the proposition means that vegetables and animals (not including man) have a natural tendency to increase faster than man, who is an animal—a proposition which is not worth the trouble of discussion.

But this is not the meaning of the writer who maintains this proposition: he is evidently speaking of human labour and its products when he is speaking of the "means of subsistence." The term "means of subsistence" therefore contains the notion of human labour; and "means of subsistence" are the products obtained by human industry applied to material objects. Everything "natural" therefore is by the very force of the term "means of subsistence" excluded from these words; for it is not of natural produce simply that the writer is speaking. but of that which human labour produces: in other words, though nature (to use the vulgar term) co-operates, the thing produced is not viewed as nature's product, but as the product of human labour. There is then nothing "natural" in "the means of subsistence," and therefore there is no natural tendency to increase in the means of subsistence; and consequently the comparison contained in the proposition between things that have no natural tendency to increase, and things that, in a sense, have a natural tendency, is unmeaning. Whether then the assertion be that "there is a natural tendency in population to increase faster than capital" (Mill), or "that the means of subsistence have a natural tendency to increase faster than population" (Senior), in either case the use of the word "natural" is incorrect, and not only tends to cause, but does cause confusion. It should be observed that in enunciating this proposition, Mr. Senior sometimes omits the word "natural."

Again, the natural tendency of population to increase is simply the desire and the power to gratify the animal passion, the consequence of which is the physical union of the sexes and the production of their kind. But this tendency (to use again this very vague expression) is

positively checked by want of food and other things necessary for human sustenance and health. If food and such other things could be had to an indefinite amount without any labour, so far as food and such other things only are necessary to its increase, population would go on continually increasing. But the actual conditions of obtaining food and such other things are human labour; that is, the labour of those animals, who if supplied with all that they want without any labour, might go on increasing indefinitely. It appears then that this so-called natural tendency of population to increase has no effect, that is, it remains a tendency; that is, it is nothing at all in results, unless man labours; and the amount of his labour, in considering this question, is quite immaterial. It is unimportant whether it consists in making a plough and ploughing the earth, or plucking an apple from a tree and eating it. The whole proposition then may be developed thus:—The means of subsistence are only produced or had by man's labour: these "means of subsistence" so produced have no natural tendency to increase, except so far as man has a natural tendency to increase. Now, man has in a sense a natural tendency to increase, that is, he has a desire and a capacity to increase, and he can increase if he has the means of subsistence. But he must have the means of subsistence first; and if the actual means of subsistence are only sufficient for the actual population, there can be no increase of the population till the means of subsistence are increased. The "means of subsistence," at any given time, and in any given nation, signify those things which the individuals of that nation require according to their several stations and the habits of society: they may be the bare means of sustaining life; or they may be those things also which Mr. Senior has well defined under the heads of "decencies" and "luxuries." If while the means of subsistence remain the same, the population lower their scale of living, it may increase farther, for the relative means of subsistence are by the supposition increased. It is true that this lowering of

ale of living is an evil, inasmuch as it tends to make society move in a grade direction; there is also a limit to the extent to which the scale of living can be lowered. The antecedent condition on which the increase of population depends is its own labour, for it cannot increase without the increase of means of subsistence, and such increase is the effect of labour only.

Man can never contemplate humanity in its origin. We must contemplate it in its progress and development, theories as to how man *begin* to prosper and gain the means of subsistence seem useless towards the solution of any problem that concerns his condition. I know this, and no more; at any time, and in any given state of society, there is a certain population which subsists in a certain mode by and by the means of subsistence which it has; and these means are partly the product and accumulation of the labour of the present generation, and partly the inheritance of their progenitors. If the means of subsistence (thus understood) at any time are sufficient, and no more, any increase of population must be preceded by increased means, or by labour rendered more productive. We cannot suppose the population to increase first, and then the additional means of subsistence to be added; for by the supposition the population has only sufficient, and which is "increase" must be fed out of some other store; and by the supposition there is no other store.

It is said that children may be born before the means of subsistence, the "revenue of the whole country," has been increased, the answer at any time either die before they have taken of the then existing means of subsistence, and therefore they are no more; or they do to partake of the general revenue, which then exists; *g* means of subsistence, in which case it must be admitted that population has increased without an increase of the whole means of subsistence; the consequence is that the average portion of the general revenue which each person gets is less than it was before.

The fact is, that in some countries the means of subsistence are barely sufficient for the existence of the actual population; in others they are more than barely sufficient. In the former case there can be no real increase of population, in the sense in which increase has just been explained, until there has first been an actual increase in the means of subsistence; in the latter case there may be an increase of the population before there is an increase of the means of subsistence, and this increase of population may go on without any increase in the means of subsistence, until the people have reached the lowest limit of subsistence in consequence of each man's share of the general revenue being diminished.

It is clear then that the "means of subsistence" (as above explained) must be first, and increase of population may then follow, and generally does follow to the full amount of these increased means of subsistence; and further, population may and sometimes does increase beyond the amount of such increased means, but it is then of necessity checked by actual suffering in the whole or in a part of the society. And this, we conceive, is the meaning of Mr. Malthus's proposition.

There seems to be an error (or rather, looseness of expression in most writers) in the mode of comparing the rate of increase of the two things, "means of subsistence" and "population." There can be no useful comparison of the rate of increase between these two things except this: a given population may attain its increase, which is proportionate to the antecedent increased means of subsistence, in a less time than these increased means of subsistence were produced; or it may take a longer time. There is also no question about a *tendency* to increase either in the one thing or the other; the question is about an actual increase, which can only take place under the conditions already stated.

The question is perplexed, and its true statement rendered difficult by the fact that an increase of the whole means of subsistence and an increase of the population may be, and generally are, going on at the same time; and it seems to have been supposed that this increase of

population, during a given time, is owing to the *then* increasing means of subsistence. But this cannot be true if it shall be admitted that a given amount of population cannot be increased, unless the actual amount of the means of subsistence of that population is first increased, or, which is the same thing, the rate of living is reduced. If some writers on this subject have not meant what is here imputed to them, they have certainly not sufficiently guarded themselves against the imputation.

There is still another consideration which perplexes the question. For very short periods it is certainly conceivable, and it is very probably the case, that sometimes population is increasing (in a certain sense) at a faster rate than the means of subsistence; that is, taking short intervals, it will or may be found that the population, during such intervals, has outstripped the means of subsistence existing at the end of such intervals, and a part of it must therefore die. These deaths consequently take place either in the whole population, or among those whose means of subsistence are reduced: for some parts of the community may and do enjoy, under such circumstances, as much as they did before, while others do not. In practice, a deficient allowance is not distributed among all, but some suffer and others do not. But on the other hand it is conceivable, and it may be true, that for short intervals the means of subsistence may sometimes be increasing more rapidly than the contemporaneous increase of population; that is, the actual population may possess and be producing and accumulating the means of subsistence more than sufficient for the sustentation of themselves and of the addition to the population made during the time of such production and accumulation. Now this is certainly the fact in many societies, as to part of the society; one part is producing and accumulating more than is necessary for the increase of the population which it is producing; this is the case with many of the middle classes in all industrious communities. *At the same time* another class is *increasing its population at a greater rate*

than the means of subsistence applicable to such increase: the check to such an increase is obvious. There is no reason why this may not be true of a whole population, as it is of a part.

On the whole, the experience of mankind proves that the sexual passion will, if unrestrained, always, or except under very peculiar circumstances, nearly always increase the population by new births up to the level of the means of subsistence at each moment existing; during short intervals the propagation of the species may also have been so active as to have outstripped the means of subsistence existing at the end of such intervals. But though the population during short intervals may so increase, its increase at the end of a series of such consecutive intervals can only be the effect of a previous increase in the means of subsistence; always supposing the condition of the people not to be growing worse, for there may be, as already observed, an increase of population up to the limit of a bare subsistence, without any actual increase in the whole means of subsistence. Therefore the increase of the means of subsistence, that is, the products of human labour, are the antecedent conditions of any actual increase, and the increase of population may be to the amount of such increase, but cannot surpass it. If for short periods the increase of population does surpass the increase on which by the supposition it depends, the increase is checked; and on taking the account at longer intervals, there is, or may be, no actual increase of the population. If for short periods the increase of the means of subsistence surpasses the increase of population, this is made up in the next periods by an increase in the population. There is then, or may be, a constant fluctuation for short periods, the population and the means of subsistence alternately increasing with greater rapidity. But any increase of population, even for a short period, supposes a previous increase of the means of subsistence over those which the actual population found to be merely sufficient before the commencement of such short period; whatever may be the comparative rates of increase.

the two during such short

It seems then that in the sense explained population may so rapidly increase that at the end of an interval the means of subsistence existing at the commencement of such interval, and which are sufficient for the then population, nothing more, added to the means subsistence produced during such interval may be insufficient to support the population existing at the end of such interval, in the same way in which the population at the commencement of such interval was living; and, on the other hand, the means of subsistence existing at the end of such interval may be more than sufficient to support the population existing at the end of such interval in the same way of increase.

At the end of any long interval, there is an increase of population, as well with the commencement of such interval, there has been during such interval, on the whole, a balance on the means of subsistence, produced by the mode of living has not been increased; and a surplus must have been raised; that is, the means of subsistence at the commencement of such interval, and those produced during it, are sufficient to produce and leave a surplus at the end of such interval, a population then at the commencement of it. This excess on the side of means of subsistence, if distributed through every moment of the interval, would leave at the end of such interval a surplus of subsistence antecedent condition of an increase in the following interval. The fact may be that in some intervals the population has passed a little beyond the limit provided at the beginning of such intervals, the consequence of which is a diminution in its increase in the next interval, and even an increase of deaths. In settling this question, it is always necessary to take into account the tendency to increase that are to be considered both for short and long periods. Tendency is nothing; for a tendency to increase is a capacity to or for

a given end, means nothing in such speculations as these, unless it becomes an effect.

The principle of population is stated by Mr. Malthus with more precision than by some writers who have adopted his opinions; and though it seems to us that his language is not always quite free from objection, his real meaning is perfectly so. His correspondence with Mr. Senior shows this. The importance of right notions on this subject must be our apology for this further attempt at explaining it.

PORTREEVE. [MUNICIPAL CORPORATIONS.]

POSITIVE LAW. [LAW, p. 581.]

POSSE COMITATUS (literally, the power of a county) comprises all able-bodied males within the county between the ages of 15 and 70 years. All such persons, without any exception, are bound to aid the sheriff in all matters that relate to his office; and he is fineable if he neglect to avail himself of their aid. In case of any invasion, rebellion, riot, &c., or breach of the peace within the county, all such persons, on pain of fine or imprisonment, are bound to attend him on being charged by him to do so, and to assist in opposing and suppressing them. They may come armed, and are justified in killing a person in case of resistance. The power of the county may also be raised when necessary for the purpose of apprehending traitors, felons, &c., and that even within particular franchises. It is lawful for any peace-officer, and perhaps even for a private person, to raise a competent number of people for the purpose of opposing and suppressing enemies, rebels, rioters, &c. within the county. But all such persons are punishable if they use unnecessary violence or create false alarms. It is also the duty of the sheriff or any minister of the king who has the execution of the king's writs, or process even in a civil nature, who meets with actual resistance in his attempt to execute them, to raise a power sufficient to quell the resistance. (2 Inst., 193, 194; 3 Inst., 161; 1 Hawk., P. C., 152, 156.)

POSSESSION. In endeavouring to explain the meaning of this term, we

shall use the following extracts from Savigny's work on the Law of Possession (*Das Recht des Besitzes*, Giessen, 1827).

"All the definitions of possession are founded on one common notion. By the notion of possession of a thing we understand that condition by virtue of which not only are we ourselves physically capable of operating upon it, but every other person is incapable. This condition, which is called Detention, and which lies at the foundation of every notion of possession, is no juristical notion, but it has an immediate relation to a juristical notion, by virtue of which it becomes a subject of legislation. As ownership is the legal capacity to operate on a thing at our pleasure, and to exclude all other persons from using it; so is detention the exercise of ownership, and it is the natural state which corresponds to ownership as a legal state. If this juristical relation of possession were the only one, everything concerning it that could juristically be determined, would be comprehended in the following positions:—the owner has the right to possess; the same right belongs to him to whom the owner gives the possession; no other person has this right.

"But the Roman law, in the case of possession, as well as of property, determines the mode in which it is acquired and lost; consequently it treats possession not only as a consequence of a right, but as a condition of rights. Accordingly, in a juristical theory of possession, it is only the right of possession (*jus possessionis*) that we have to consider, and not the right to possess (called by modern jurists, *jus possidendi*), which belongs to the theory of property.

"We now pass from the notion of mere detention to that of juristical possession, which is the subject of this treatise. The object of the first part, which is the foundation of the whole investigation, is to determine this notion formally and materially. Formally, by explaining those rights which presuppose possession as a condition, and consequently determining the signification which the non-juristical notion of detention obtains in jurisprudence, in order to

its being considered as something legal, that is, Possession; materially, enumerating the conditions which Roman law requires for the exercise of possession, and consequently the modifications under which it can be viewed as possession.

"The formal determination of possession by force of which alone possession can become a subject of law, is divided into three parts. First, we must determine the place where possession, as a legal relation, occurs in the system of Roman law. Then we must enumerate the rights which Roman law recognises as a consequence of possession, and we must also determine the rights which are improperly considered rights of possession. It will be easy to answer the questions:—possession is to be considered as a *jus in re*, and whether as a *jus in re*. The simplest mode in which possession appears in a system of jurisprudence is in the owner having the possession; but we are here concerned with possession independent of owner as the source of peculiar rights. Formerly of these two questions, the former may be expressed thus—in what cases has possession been distinguished from ownership? a mode of expression which has been used by many.

"In the second place we must determine how the different senses in which possession occurs in the Roman law are distinguished from one another, and what were the significations of possession generally, and *Possessio naturalis* and *Possessio civilis*, among the jurists.

"In the whole system of Roman law there are only two cases in which can be ascribed to possession itself, as distinct from all ownership, these are Usucapion and Interdict.

"The foundation of usucapion is the rule of the Twelve Tables, that whoever possesses a thing one or two years becomes the owner. In this case possession, independent of all right, is the foundation of property, which must indeed have originated in a similar way, in order to have such an

is a bare fact, without any other effect, what such effect gives to it, viz. if it is possession itself, distinct from any other legal relation, an accession, and consequently the nature of ownership, depends.

Real interdicts are the second possession, and their relation to it is this: possession of itself (legal relation, the disturbance given is no violation of a legal right) it can only become so by the force of its being at the same time a violation of a legal right. But if disturbance of possession is effected, such force is a violation of the every forcible act is illegal.

Illegal act is the very thing is the object of an interdict to. All possessorial interdicts then this: they presuppose an act in form is illegal.*

Since possessorial interdicts are on such acts as in their form, it is clear why possession, out of all regard to its own nature, may be the foundation of

When the owner claims a his property (vindictive), it is of perfect indifference in what other party has obtained possession; since the owner has the right to every other person from the fact of it. The case is the same next to the interdict, by which no in possession, is a possessorial interdict is not a possessorial

for the 'misdo' itself gives tion, but it gives a right to detest this right is made effective in way as in the case of property. other hand, he who has the bare of a thing has not on that account right to the detention, but he it to repulse from all the world can shall be used against him. or, force is used and directed is possession, the possessor should by means of the interdicts, is the cessation of these in-

terdicts, and in this case, as in the case of accession, it is the cessation of rights generally.

* Most writers take quite a different view of the matter, and consider every violation of possession as a violation of a legal right, and possession consequently as a right of itself, namely, presumptive ownership, and possessorial claims as provisional vindications. This last, which is the practical part of this opinion, is completely confuted in a subsequent part of this treatise; but it is proper to show here how far such a view is true, as this may be a means of reconciling conflicting opinions. The formal act of illegality above mentioned is not to be so understood, as if possessorial interdicts were a necessary consequence of the independent juridical character of force, and obviously spring out of it. This consequence of force, namely, that possession of the thing must be restored to the person who has been ejected, without regard to the question whether or not he has any right to the thing, is rather simply a positive rule of law. Now, if we ask for the reason of this kind of protection being given against force, that is, why the ejected party should recover the possession to which he may possibly have no title, it may be replied, that the reason is the general presumption that the possessor may be the owner. So far then we may view possession as a shadow of ownership, as a presumed ownership; but this view of the matter only extends to the establishment of the rule of law in general, and not to the legal reason for any particular case of possession. This legal reason is founded rather in the protection against the formal injury, and accordingly possessorial interdicts have a completely obligatory character, and can never be viewed as provisional vindications."

The special object of Savigny's essay may be collected from these passages. The legal principles here developed are applicable to every system of jurisprudence. There must always be a distinction between the right to possess, which is a legal consequence of ownership, and the right of possession, which is a matter

interdicts were not limited to force; they comprehended the three kinds. (Farrer, *loc. cit.* 2; v.

pendent of all ownership. The owner of a thing may not have the possession, but he has a right to the possession, which he must prosecute by legal means. The possessor of a thing, simply as such, has rights which are the consequences of his possession; that is, he is legally entitled to be protected against forcible ejection or fraudulent deprivation; his title to a continuance of his possession is good against all persons who cannot establish their right to the thing, and this continued possession may, according to the rules of positive law in each country, become the foundation of ownership. It may be that the acquisition of possession may also be the acquisition of ownership, or that the acquisition of possession may be essential to the acquisition of ownership. Thus, in the case of occupation, the taking possession of that which has no owner, or the acquisition of the possession, is the acquisition of the ownership. Also, when a thing is delivered by the owner to another, to have as his own, the acquisition of the possession is the acquisition of the ownership. In these examples, ownership and possession are acquired at the same time, and there is no right that belongs to the possessor as possessor; his rights are those of owner. But the form and mode of the acquisition of the possession, viewed by itself as distinct from the acquisition of the ownership, will also be applicable to the cases of possession when possession only is acquired. For possession of itself is a bare fact, though it has legal consequences; and being a bare fact, its existence is independent of all rules of the civil law or of the *jus gentium*, as to the acquisition and loss of rights. (Savigny, p. 25.)

Having shown that in the Roman law all juristical possession has reference to usucapion and interdicts, and that the foundation of both is a common notion of juristical possession, Savigny proceeds to determine the material conditions of this notion.

In order to lay the foundation of possession as such, there must be detention, and there must also be the intention to possess, or the "*animus possidendi*." Consequently the "*animus possidendi*"

consists in the intention of ex ownership. But this ownership either be a person's own owner that of another: if the latter, the such "*animus possidendi*" as mention amount to possession. former case a man is a possessor, he treats the thing as his own: it necessary that he should believe his own.

Whether then we are considering session as such, or that possession is concurrently acquired with own or which completes the acquisition the exercise of, ownership, the facts of possession are the same. ownership is transferred from one to another, every system of law require some evidence of it. But the evidence of the transfer of ownership may be entirely independent of the evidence of acquisition of possession; and the evidence of the acquisition of possession may be inseparable from that of acquisition of ownership. There must generally be some act which is evidence of the acquisition of possession whether possession as such is or without ownership, or possession accompanied by ownership, or possession necessary to the complete acquisition of ownership, or possession as simple exercise of ownership.

It is remarked by Savigny (*Das des Besitzes*, p. 185), "that in the theory of possession nothing seems to determine than the character of corporeal apprehension which is need to the acquisition of possession. But fact all writers have understood a mediate touching of the corporeal and have accordingly assumed that are only two modes of apprehension: laying hold of a moveable thing the hand; and entering with the hand a piece of land. But as many occur in the Roman law in which possession is acquired by a corporeal act, without such immediate contact, these have been viewed as symbolical, which, through the medium of juristical fiction, become the substitute for corporeal apprehension." After showing that is not the way in which the acquisition of possession is understood in the

that there is no symbolical sign, but that the acquisition of a thing is in all cases to be referred to a corporeal act, he determines, in the following manner :

“ If a man holds a piece of gold in his hand, he doubtless the possessor of it ; and this and other similar cases abstracted the notion of a contact generally as the essential condition of acquisition of possession. In the case put, there is something which is only accidentally united to the corporeal contact, namely, the possibility to operate immovably on the thing, and to exclude all other things from doing so. That both these circumstances in the case put, cannot be said that they are only accidentally united with corporeal contact, follows from the fact that the possibility can be without the contact, and the contact without the possibility. As to the first, he who can at any moment acquire a thing which lies before him as much uncontrolled as if it were actually laid hold of is to the latter, he who is bound to have immediate contact with it, yet one might rather affirm that he is possessed by than that he possesses. This physical possibility, however, which as a fact must be essential to all acquisition of possession : contact is not contained in that and there is no case in which an apprehension need be as-
 sessed as an exposition of a principle of law is applicable to all systems of jurisprudence which have received careful elaboration, for the principle is in its nature general. It is that the expenditure of our law is always clearly seen this principle when they have recognized it may be that they have not acted upon it. Still it will appear in various cases that the physical possibility of operating on a thing is the essential character of the acquisition of possession in the English law. In the case of *Turner* (2 Vez., 431) it was held by Lord Hardwicke that delivery of the

mortis causa,” and delivery of receipts for South Sea Annuities was not held sufficient to pass the ownership of the annuities. In his judgment Lord Hardwicke observed, “ delivery of the key of bulky things, where wines, &c. are, has been allowed a delivery of the possession, because it is the way of coming at the possession, or to make use of the thing ; and therefore the key is not a symbol, which would not do. In one of his chapters (§ 16, *Apprehensio hereditariarum Sacrum*) Savigny uses the very same example of the key, showing that it is not a symbol, but the means of getting at things which are locked up, and therefore the delivery of the key of such things, when they are sold, is a delivery of the possession. (See the cases in the *Index* cited by Savigny, p. 309.)

POST-OFFICE. Correspondence is the offspring of advanced civilization. When the state of society in this country anterior to the seventeenth century is considered, there can be little surprise that we hear nothing of a post-office before that period. The business of the state only demanded correspondence. The king summoned his barons from all quarters of the kingdom by letters or writs, and held frequent communication with his sheriffs, to collect his parliament together, to muster his forces, to preserve his peace, to fill his treasury. The expenses of the establishment of Nuneh, charged with the conveyance of letters, formed a large item in the charges of the royal household. As early as the reign of King John, the payments of Nuneh for the carriage of letters may be found enrolled on the Close and Misc. Rolls, and these payments may be traced in an almost unbroken series through the records of subsequent reigns. Nuneh also formed part of the establishment of the more powerful soldiers. The Nuneh of the time of King John was probably obliged to provide his own horse throughout his journey ; whilst in the reign of Edward II. he was aided, and found it more suitable, to hire horses at fixed posts or stations. In 1481, Edward IV., during the Scottish war, is stated by Gale to have established at certain posts, twenty miles apart, a change of riders, who bore

letters to one another, and by this means expedited them two hundred miles in two days. The Persians had a similar means of communication, which is described by Herodotus (viii. 98). It would seem that in England the posts, at which relays of riders and horses were kept, were wholly private enterprises; but that when their importance became felt and appreciated, the state found it both politic and a source of profit to subject them to its surveillance. A statute in 1548 (2 & 3 Edw. VI. c. 3) fixed a penny a mile as the rate to be chargeable for the hire of post-horses.

In 1581 one Thomas Randolph is mentioned by Camden as the chief postmaster of England, and there are reasons for concluding that his duties were to superintend the posts, and had no immediate connection with letters. The earliest recital of the duties and privileges of a postmaster seems to have been made by James I. The letters patent of Charles I. in 1632 (*Pat.*, 8 Car. I., p. i. m. 15 d., *Federa*, vol. 19, p. 385) recite that James constituted an office called the office of postmaster of England for foreign parts being out of his dominions.

In 1635 a proclamation was made "for settling of the letter-office of England and Scotland." It sets forth "that there hath been no certain or constant intercourse between the kingdoms of England and Scotland;" and commands "Thomas Witherings, Esq., his Majesty's postmaster of England for foreign parts, to settle a running post or two, to run night and day between Edinburgh and Scotland and the City of London, to go thither and come back in six days." Directions are given for the management of the correspondence between post-towns on the line of road and other towns which are named, and likewise in Ireland. All postmasters are commanded "to have ready in their stables one or two horses;" twopence-halfpenny for a single horse and fivepence for two horses per mile were the charges settled for this service. A monopoly was established, with exceptions in favour of common known carriers and particular messengers sent on purpose. In 1640 a

proclamation was made concerning sequestration of the office of postmaster for foreign parts, and also of the office of England, into the hands of P. Burlamachy of London, merchant; in 1642 it was resolved by a committee of the House of Commons that sequestration was "a grievance and gail, and ought to be taken off," and Mr. Witherings ought to be restored. As late as 1644 it appears that the master's duties were not connected rectly with letters. A parliamentary resolution entered on the Journals of Commons states "that the Lords Commons, finding by experience that most necessary, for keeping of good intelligence between the parliament their forces, that post stages should be erected in several parts of the king and the office of master of the post couriers being at present void, or that Edmund Prideaux, Esq., a member of the House of Commons, shall be, is hereby constituted, master of the messengers and couriers." "He first published a weekly conveyance of letters into all parts of the nation, thereby to the public the charge of maintaining postmasters to the amount of 7000*l.* annum." (Blackstone.) An attempt to set up a separate post-office, in 1649, was checked by a resolution of the House of Commons, which declared "that the office of postmaster is, and ought to be the sole power and disposal of parliament."

But the most complete step in the establishment of a Post-office was taken in 1656, when an act was passed "to settle the postage of England, Scotland, and Ireland." This having been the model for all subsequent measures, induces us to give something more than a passing notice of it. The preamble sets forth "the erecting of one General Post-office for the speedy conveying and recarrying letters by post to and from all places within England, Scotland, and Ireland, and into several parts beyond the seas, hath been and is the best means out of to maintain a certain and constant course of trade and commerce between the said places, to the great benefit of

these nations, but also to convey que despatches, and to discover out many dangerous and wicked which have been and are daily against the peace and welfare commonwealth, the intelligence cannot well be communicated for of receipt." It also enacted we shall be one General Post-office officer stiled the postmaster of England and comptroller of office." This officer was to have ag of all "through" posts and riding in post." Prices for letters, fish, Scotch, Irish, and foreign, at-horses, were fixed. All other were forbidden to "set up or im-foot-posts, horse-posts, or pac-." These arrangements were in the first year of the Restoration Act which was repealed 9 11. In 1683, a metropolitan it was set up, the history of given at length in the 'Ninth of the Commissioners of Post-quiry.' From 1711 to 1838, of 150 acts affecting the regula Post-office were passed. In year of Her present Majesty se of these were repealed, either partially, and four Acts were (aps. 33, 34, 35, 36), by which e department of the Post-office istral. Their enactments have gated, to a great extent, by the of Mr. Rowland Hill's plan of postage, which we shall pre-ice. This measure was carried by an Act passed in 1839, 2 and 34, which conferred temporary e Lords of the Treasury to was subsequently confirmed by & 4 Vic. c. 96, passed 10th 1840).

Postage.—The first establish-ate rate of postage for carrying ces in 1533, in the proclamation scribed. The rates were fixed

80 miles	. 2d. single letter.
60 miles	"
40 miles	. 4 "
20 miles	. 6 "
barriers and	"
land	. 8 "

'Two, three, four, or five letters in one packet, or more, to pay according to the bigness of the said packet.' The rates of postage were successively altered in 1710, 1765, 1784, 1797, 1801, 1805, and 1812. In some instances the scale of 1765 was lower than that of 1710: one penny instead of threepence was charged for distances not exceeding fifteen miles; and twopence instead of threepence for two other distances. In the alterations made in subsequent years the rates of postage were increased each time. Before the uniform penny-postage was adopted the rates in use were as follows:—

Single letters from any post-office in England to any place not exceeding 15 measured miles from such office	. 4d.
Above 15 and not exceeding 20	5
20	6
30	7
40	8
50	9
60	10
70	11
80	12
90	13
100	14

And further for every 100 or part thereof 1

These rates were applied to general-post letters passing from one post-town to another post-town. The principle of the rating was to charge according to the distance which the conveyance travelled, until the year 1839, when the direct distance only was charged. A single letter was interpreted to mean a single piece of paper, provided it did not exceed an ounce in weight. A second piece of paper, however small, or any inclosure, constituted a double letter. A single sheet above an ounce was charged with four-fold postage. After a fourfold charge, the additional charges advanced by weight.

In Scotland, letters, when conveyed by mail-coaches only, were subject to an additional halfpenny. Letters passing between Great Britain and Ireland were subject to the rates of postage charged in Great Britain, besides packet rates, and Menai, Conway Bridge, or Milford rates.

The Postmaster-general had authority to establish penny-posts for letters not exceeding in weight four ounces, to, from,

or to, any city, town, or place in the United Kingdom (other than London or Dublin), without any reference to the distance to which the letters were conveyed. The London Twopenny Post extended to all letters transmitted by the said post in the limits of a circle of three miles' radius, the centre being the General Post-office in St Martin's le Grand; which limits the Postmaster-general had authority to alter. The London Threepenny Post extended to all letters transmitted by the said post beyond the circle of three miles' radius, and within the limits of a circle of twelve miles' radius, the centre being the General Post-office.

The Select Committee of the House of Commons in 1838 and 1839, which investigated Mr. Rowland Hill's plan, reported the following to be the average rates of postage:—

Average rates, Multiple Letters being included and counted as Single.

	<i>d.</i>
Packet and ship letters	nearly 23½
— and inland general-post letters	nearly 9½
Ditto, ditto, and London 2d. and 3d. post letters	nearly 8½
Ditto, ditto, ditto, and country 1d. post letters	little more than 7½
Inland general-post letters only	nearly 8½
Ditto and London 2d. and 3d. post letters	nearly 7½
Ditto, ditto, and country 1d. post letters	nearly 6½
<i>Average rates, Multiple Letters being excluded.</i>	
Single inland general-post letters	nearly 7½
Ditto and London 2d. and 3d. post letters	little more than 6½
Ditto, ditto, and country 1d. post letters	nearly 6½

Franking.—As early as a post-office was established, certain exemptions from the rates of postage were made. Parliamentary franking existed in 1666. In the paper bill which granted the post-office revenue to Charles II. a clause provided that all the members of the House of Commons should have their letters

free, which clause was left to lords, because no similar provision was made for the passing of their letters. A compromise was made on that point, that their letters should pass free.

In 1735 the House of Commons executed some investigations into the abuses which appear on the Journals. In 1764 (4 Geo. III.), a committee pointed "to inquire into the abuses and abuses in relation to the receiving of letters and parcels the duty of postage." Resolutions for regulating the privilege were passed. From time to time the privilege was extended, until it was finally abolished, with very few exceptions, on the 10th of January, 1843.

Seven millions of franks, or three millions of general-post stamps, were estimated to pass through the Post-office annually.

The privileged letters, on a standard of single letters, are now above 30 per cent. of the whole letters transmitted by the general post.

The average weight of a single letter was about 3-10ths of an ounce; the average weight of a pair of letters was about 48-100ths of an ounce; of an official frank 1-9376 oz., two ounces; and that of a copy of an official frank 3-1129 oz. Had the franking been then existing, it would have contributed 1,002,300 to the revenue.

Newspapers with a few exceptions are free of postage. Newspapers from foreign countries are charged at the rate of postage, which depends on the granting of equivalent terms to newspapers sent by post to such countries. All franking is now abolished.

Revenue.—The statistics of office revenue are far from complete for the early period of the Post-office. In 1716, or thereabouts, scattered accounts can be collected. In 1653 the annual revenue was £10,000L., and in 1659 for 14,000L. (the Commons). In 1711 it amounted to 21,500L. annually, amounting to the Duke of Devonshire in 1674 the farming of the revenue

In 1685 it produced 65,000*l.*, and continued the grant after 1688, the king continued to receive the *l.*. In 1711 the gross revenue was 111,325*l.*. From 1716 to a average yearly net revenue was founded upon "a certain account (an estimate." (*Commons' Journals* 16, 1735). In the Postage of 1838 (vol. II, App. p. 170; p. 511) are accounts showing the weight, charge of management, net and rate per cent. of collection in Britain from 1758 to 1837, and in 6 and Ireland from 1800 to 1837. extracts for a few years will serve the purpose.

GREAT BRITAIN.

Year	Gross Receipts.	Charges of Management.	Rate per cent. of Collection.
	£	£	£
1758	922,075	148,045	66
1800	805,058	140,398	45
1801	402,918	269,670	65
1802	506,500	220,525	43
1803	1,018,791	234,787	22
1804	2,193,741	294,045	27
1805	2,206,736	609,220	27
Net receipt, deducting returns, was			
	£	£	
1758	73,780	1799	457,828
1800	154,760	1816	1,526,527
1801	189,348	1837	1,511,026
1802	980,975		

SCOTLAND.

	1800	1837
	£	£
Receipts	100,651	220,758
Charges of collection	16,826	59,945
Net receipt	83,755	160,813
Rate per cent. of collection	161	27

IRELAND.

	1800	1837
	£	£
Receipts	84,140	255,070
Charges of collection	59,216	95,548
Net receipt	24,924	159,522
Rate per cent. of collection	79	27

UNITED KINGDOM.

	1837	1838
	£	£
Gross receipts	2,462,269	2,467,316
Charges of collection	669,240	669,786
Returns	192,501	180,938
Net receipts	1,600,798	1,616,592
Rate per cent. of collection	27	27

The Select Committee on Postage, in 1838, instituted a comparison of the Post-office revenue, from which it appeared that from 1815 to 1830 inclusive, on an average gross revenue, excluding repayments, of 2,120,597*l.* there had been an increase of 60,227*l.*, averaging only 387*l.* yearly, or little more than 1*l.* per thousand, though the advance had been rapid in population, and still more so in wealth, industry, and trade.

Establishment, Cost of Management, &c.—The head of the Post-office is styled the Postmaster-General, under whose authority are placed all the post-offices in the United Kingdom and the colonies. The office was jointly held by two persons until the last few years. It is considered a political one, and the holder relinquishes it with a change of ministry; but the postmaster-general has not generally a seat in the cabinet. The Commissioners of Post-office Inquiry (4th Report) recommended that the office should be exercised by three permanent commissioners; and a Bill passed the Commons to give effect to the recommendation, but was thrown out by the Lords.

In 1835 the number of persons employed at the General Post-office, London, was 1037; the number of General-post letter-carriers was 281, and of Two-penny-post letter-carriers 454. The expenses of the office in salaries amounted to 96,234*l.* A parliamentary paper was printed in 1845, which showed the number of persons employed in the General Post-office at that time. This return is now out of print, but it showed that a large addition had been made to the staff of the department since 1835.

In 1831 and 1832 the chief offices of London, Dublin, and Edinburgh were

re-modelled by the Duke of Richmond, then postmaster-general. The separate office of postmaster-general for Ireland was abolished; and a secretary at Dublin and at Edinburgh is chief executive officer for the respective countries.

Constant additions are being made to the number of post-offices throughout the kingdom. In 1840, considering posts formerly called penny-posts, 'fifth clause posts,' and sub-offices as post-offices, the following may be taken to be about the numbers:—

	Post- Offices.	Sub- Offices.	Penny- posts.	Total.
England	650	190	1090	1930
Scotland	220	105	230	555
Ireland	330	105	200	635

Every post-office in the United Kingdom has direct communication respectively with the chief offices in London, Dublin, and Edinburgh.

The Commons' Committee, in 1838, prepared an analysis of the cost of management of the Post-office for the United Kingdom. These accounts show that about four-fifths of the charges consisted of the cost of distributing letters in the United Kingdom. Transit cost two-fifths, (287,306*l.*), and the establishment two-fifths (288,078*l.*). The maintenance of the post between this country and the colonies and foreign countries, the inland post in certain colonies, and other charges, make up the remaining fifth. But these accounts were not altogether complete, because the expense of those packets controlled by the Admiralty was included in the Navy Estimates, and could not be separated. And as the penny stamp on newspapers was retained as a postage, about 185,000*l.* should be carried to the account of the Post-office receipts. These accounts are, of course, subject to change yearly. The transmission of the mails by railroads has added much, since the above analysis was made, to the mileage charges.

No accounts of the number of documents passing through the Post-office were kept until very lately. Founded upon a very careful examination of the best data, the numbers were estimated in 1838 to be as follows:—

Description of Letters.	Yearly Number of Letters.	Average rate per Letter.
Packet and ship letters	3,523,572	23'15
General-post inland letters above 4 <i>d.</i>	46,378,800	9'22
Ditto, not exceeding 4 <i>d.</i>	6,153,800	3'5
London local-post letters	11,837,352	2'32
Country penny post letters	8,030,412	1
Total	74,923,636	7'60
Parliamentary franks	4,813,448	..
Official franks, for public purposes	2,109,010	..
Public statutes	77,548	..
Newspapers	44,000,000	..
Total of documents transmitted by post	126,423,836	..
Unappropriated

Total revenue from letters, 1837 2,3
(See Notes to 'Postage Report,' pages 4 and 5)

The chargeable letters in the leaving London were found to be only 7 per cent. of the whole weight of those mails. The total weight of chargeable letters and franks carried the thirty-two mails leaving London only 2912 lbs. Deducting one-half the weight of the franks and franked documents, the weight of all the chargeable letters was only 1456 lbs., being 22½ less than the weight which a single man is able to carry. The average weight of the thirty-two mails was found to be as follows:—

Average of 32 Mails.	Pounds weight.
Bags weighed	68
Letters, including franked letters and documents	91
Newspapers	304
	463

The management of the conveyance of the mails by sea and land is subject, of course, to those constant changes which arise out of the improvements constantly taking place in the various modes of transit. Certain packets are exclusively controlled by the Admiralty, to which charge they were removed in 1838; others still remain with the Post-office. Contracts for the conveyance of the

bags to the Continent are made between the Post-office and the proprietors of certain steam-vessels. The Post-office, moreover, has the power of sending a bag of letters in any private ship.

The inland correspondence is carried on by railroads, by four-horse and two-horse coaches; by cars in Ireland, by single-horse carts, on horseback, and foot.

The number of miles travelled over in England and Scotland by the mail-coaches in 1834 was 5,911,006, and in 1839, 7,377,857. The average speed in England was $\frac{7}{8}$ miles per hour; greatest speed 10 $\frac{1}{2}$ miles; slowest 5 miles. The average mileage for four-horse mails in England was 14d. and in Ireland 24d. per English mile. The system of mail-coaches owed its origin to Mr. Palmer, who, in 1784, laid a plan before Mr. Pitt, which was adopted by the government, after much opposition from the functionaries of the Post-office. Mr. Palmer found the post, instead of being the quickest, nearly the slowest conveyance in the country; very considerably slower than the common stage-coaches. The average rate of speed did not exceed three miles and a half per hour. Whilst coaches left London in the afternoon and reached Bath on the following morning, the post did not arrive till the second afternoon. Slowness was not the only defect; it was also irregular, and very insecure. The robbery of the mail was very common. Mr. Palmer succeeded in perfecting the mail-coach system, and in greatly increasing the punctuality, the speed, and security of the post and the revenue of the post-office.

Mr. Rowland Hill's Plan.—In 1838 Mr. Rowland Hill privately submitted to the government a plan for the improvement of the post-office, and subsequently published his views on the subject in a pamphlet under the title of 'Post-office Reform—its Importance and Practicability.' The main features of Mr. Hill's plan were—1, a great diminution in the rates of postage; 2, increased speed in the delivery of letters; and, 3, more frequent opportunities for their dispatch. He proposed that the rate of postage should be uniform, to be charged according to weight, and that the payment should

be made in advance. The means of doing so by stamps was not suggested in the first edition of the pamphlet, and Mr. Hill states that this idea did not originate with him. It originated incidentally (as stated by Mr. Hill) in a suggestion of Mr. Charles Knight to the Chancellor of the Exchequer to have a stamped penny cover for the postage of newspapers, when it was contemplated to abolish the newspaper stamps. A uniform rate of a penny was to be charged for every letter not exceeding half an ounce in weight, with an additional penny for every additional ounce. Mr. Hill discovered the justice and propriety of a uniform rate in the fact that the cost attendant on the transmission of letters was not measured by the distance they were carried. He showed on indisputable data that the actual cost of conveying letters from London to Edinburgh, when divided among the letters actually carried, did not exceed one penny for thirty-six letters.

The publication of this plan immediately excited a strong public sympathy in its favour, and especially with the commercial classes of the City of London. Mr. Wallace moved for a select committee to inquire into its merits on the 9th May, 1837; but the motion fell to the ground. In December, 1837, the government assented to the appointment of a select committee to inquire into and report upon the plan. After sitting upwards of sixty-three days, and examining Mr. Rowland Hill and eighty-three witnesses, besides the officers of the departments of the Post-office and the Excise and Stamp offices, the committee presented a most elaborate Report in favour of the whole plan, confirming by authentic and official data the conclusions which Mr. Hill had formed from very scanty and imperfect materials. In the session of 1839 the Chancellor of the Exchequer brought forward a Bill to enable the Treasury to carry the plan into effect, which was carried by a majority of one hundred in the House of Commons, and passed into law on the 17th of August, 1839. In the following month an arrangement was made which secured Mr. Rowland Hill's superintendence of the working out of his own measure; but he was superseded by the administration

which came into office in September, 1841. On the 5th December, 1839, as a preparatory measure, to accustom the department to the mode of charging by weight, the inland rates were reduced to a uniform charge of 4d. per half-ounce. The scale of weight for letters advanced at a single rate for each half-ounce up to sixteen ounces. Other reductions were made in packet rates; and the London district post was reduced from 2d. and 3d. to 1d. This measure continued in force until the 10th January, 1840, when a uniform inland rate of postage of 1d. per half-ounce, payable in advance, or 2d. payable on delivery, came into operation. On this day parliamentary franking entirely ceased. On the 6th May stamps were introduced. The warrants of the Lords of the Treasury which authorised these changes were published in the London Gazette of the 22nd November, 28th December, 1839; 25th April, 1840. Returns have been made which show the increase of letters under the uniform-postage system. The number of letters which were actually counted for the week ending 24th November, 1839, before any changes took place, was 1,585,973 letters, including franks; for the week ending 22nd December, 1839, during the fourpenny rate, it was 2,008,687; and for the week ending 23rd February, 1840, 3,199,637. Thus the number of chargeable letters of all kinds increased 29 per cent. under the 4d. rate, and 121 per cent. (or, deducting the government letters, 117 per cent.) under the 1d. rate. The number of chargeable letters dispatched by the General Post increased 40 per cent. under the 4d. rate, and 169 per cent. (or, deducting the government letters, 165 per cent.) under the penny rate.

The gross receipts of the Post-office for the United Kingdom in the year preceding the adoption of the uniform rates of postage, and in subsequent years, are shown in the following table:—

1838	£2,346,278	1842	£1,578,145
1839	2,390,763	1843	1,535,215
1840	1,342,604	1844	1,705,067
1841	1,495,540		

The net receipts for each of the fol-

lowing years ending 10th October in each were as under:

	£.		£.
1838	1,836,000	1842	591,000
1839	1,533,000	1843	590,000
1840	694,000	1844	672,000
1841	426,000	1845	688,000

The cost of management for the year ending 5th Jan., 1839, was 686,768*l.*; and for the year ending 5th Jan., 1845, 885,314*l.* Day-mails have been established to every town of importance, and in some cases the communication by post between one town and another takes place several times a day. The mileage paid to railway companies has greatly increased, but the object for which the post-office is established has been more completely attained. Correspondence has increased with the rapidity and frequency of conveyance.

In 1839 the gross receipts of the London district post were 137,041*l.*, and in 1844 225,627*l.*; but the rates of postage (2d. and 3d.) in 1839 were uniform as it respects weight, and were lower for letters of a certain weight than under the existing system of charging in proportion to the weight.

The number of letters delivered in the United Kingdom for one week in 1839, before the establishment of the uniform rates of postage, and one week in the corresponding week of the year 1841, was as follows:—

	Week ending 24 Nov. 1839.	Week ending 21 Nov. 1841.
Country offices	764,938	2,029,579
London, inland, & ship	229,292	564,481
London District	258,747	435,602
Total England and Wales	1,252,977	3,029,432
Ireland	179,931	403,421
Scotland	153,065	413,348
Total United Kingdom	1,585,973	3,846,192

The total number of letters delivered in the United Kingdom in the week ending Nov. 20th in each of the following years was as under:—

In 1841	3,846,122
In 1842	4,302,546
In 1843	4,349,215

The principle of cheap postage has

been applied to the transmission of money through the post-office by means of money-orders. A few years ago the cost of sending 10s. to a person 160 miles from London would have been 2s. 6d., whereas the expense would now be only 4d. including the postage. In November, 1847, the commission on money-orders was reduced from 1s. 6d. to 6d. for sums above 2l. and not exceeding 2l.; and from 6d. to 3d. for sums not exceeding 2l. The number of offices empowered to grant money-orders has been increased and other facilities have been granted. The consequences of these successive changes have been as follows: Number and amount of money-orders issued in England and Wales in the quarters ending—

	No.	Amount.
3 April, 1839 ..	26,538	£49,496
3 Jan., 1840 ..	40,753	57,411
3 Jan., 1841 ..	139,584	534,622
3 Jan., 1842 ..	290,299	820,574

POWER OF ATTORNEY. [LETTER OF ATTORNEY.]

PRELUNICE. [LAW, CRIMINAL, p. 138; BENEFICE, p. 339.]

PREBEND (*prebenda*, from *præbui*, a Low Latin word signifying provision or provisioner), the portion which the member of a cathedral or collegiate church, called a Prebendary, received in right of his place for his maintenance. It was named from the place whence the profit proceeded, which was either from some temporal lands or church possessions attached to that church, or some other church whose revenues were appropriated towards the maintenance of the member of the cathedral or collegiate church. [CANON.]

PREBENDARY (*prebendarius*). [PREBEND, BENEFICE.]

PRECEDENCE, "a going before," which explanation explains the nature of the thing. On all great and public occasions when persons come together, it is essential to have some rule which shall determine who shall walk first or sit in the chief place, and so forth. A positive rule prevents disputes and contributes to order. In England the members of the College of Arms, who are the council of the armistrial of England, are usually

referred to in questions of precedence; and they have arrangement of public processions, as at royal marriages, funerals, coronations, and the like, when questions of precedence come to be considered.

There are tables of precedence in many books, and especially in those called portages.

PRECEPTORY. [COMMANDEERS.]

PRELATE (etymologically from *præ* and *latas*), a person *performed* or advanced before another, but it is confined to a particular species of performance or advancement, namely, that amongst the clergy; and it is applied to those only amongst them who have attained the very highest dignity, that of bishop or archbishop, to which we may add patriarch, in such churches as have an officer so denominated. The word prelate has, however in ancient times been applied to simple priests, members of the clerical body in general.

PREMIUM IN LIFE INSURANCE.

[LIFE INSURANCE.]

PREROGATIVE, a term derived from the Latin *Prærogative*, though the modern sense of the word bears little resemblance to its original meaning. As a political term it now signifies all the powers that belong to the crown of Great Britain and Ireland, and are exercised by the king or queen regnant, either personally or by delegation to others. [KING, PARLIAMENT.]

PREROGATIVE COURT. [ECCLESIASTICAL COURTS.]

PRESCRIPTION. "No custom is to be allowed, but such custom as hath been used by title of prescription, that is to say, from time out of mind. But diverse opinions have been of time out of mind, &c., and of title of prescription, which is all one in the law." (Litt., § 170.) According to this passage, "time out of mind," and "prescription," which are the same thing in law, are essential to custom: another essential to custom is usage. But there is a claim or title which is specially called prescription, and which is like custom so far as it has the inseparable incidents of time and usage; but it differs from custom in the manner in which it is pleaded, which difference shows the difference of the

right. This claim is called prescription, because the plaintiff or defendant who makes it "prescribeth that," &c.; stating, after the word "prescribeth," the nature of his claim.

The following is an example of a prescription (Co. Litt., 114, a):—"I. S., seised of the manor of D. in fee, prescribeth thus: that I. S., his ancestors, and all whose estate he hath in the sayd manor, had and used to have common of pasture time out of mind in such a place, &c., being the land of some other, &c., as pertaining to the same manor." The claim of a copyholder of a manor for common of pasture in the manor, alleges a custom time out of mind within the same manor, by which all the copyholders of the manor have had and used common of pasture in it. The claim by prescription then is properly a claim of a determinate person: the claim by custom, as opposed to prescription, is local, and applies to a certain place, and to many persons, and perhaps, it may be added, to an indeterminate number, as the inhabitants of a parish. The following definition of prescription appears to be both sufficiently comprehensive and exact:—"Prescription is when a man claimeth anything for that he, his ancestors, or predecessors, or they whose estate he hath, have had or used any thing all the time whereof no memory is to the contrary," (*T. de la Ley.*) From this definition it follows that prescription may be a claim of a person as the heir of his ancestors, or by a corporation as representing their predecessors, or by a person who holds an office or place in which there is perpetual succession; or by a man in right of an estate which he holds. It is said that certain persons, attorneys for instance, may prescribe that they and all attorneys of the same court have certain privileges; it seems indifferent whether this is called prescription or custom, but it is more consistent with the old definitions to call it prescription, since it is not a local usage, and it is by or on behalf of a determinate number of persons, that is, all the attorneys of a particular court. It is also said that parishioners may prescribe in a matter of easement, as a way to a

church-yard, but not for a profit on land: such a prescription, however, is contained within the above definition and is in all respects more proper custom.

It is essential to prescription (as to the limitations hereinafter mention) that the usage of the thing claimed should have been time out of mind, timeous, and peaceable. "Time out of mind" means, that there must be evidence of non-usage or of interruption inconsistent with the claim and of a subsequent to the first year of Edw. I., which is the time of the commencement of legal memory. If it is shown, either by evidence of possession, by record, or writing, or by other admissible evidence, that alleged usage began since the first of Richard I., the prescription cannot be maintained. Repeated usage also may be proved in order to support the prescription, but an uninterrupted enjoyment for twenty years has been considered sufficient proof, where there is evidence to show the commencement of the enjoyment. [PRESCRIPTION.] Various rules as to prescription may be prescribed for, in what form a claim must be made, and how a prescription may be lost or destroyed, held treatises on law. It is said that prescription is founded on the assumption of an original grant which is now lost.

Recent Acts have made some alterations as to prescription, and limited the time within which actions can be brought or suits instituted relating to real property. The 3 & 4 Wm. IV. c. 27, applies to every thing of a corporeal nature, which is land in the sense in which land is interpreted in that Act, but it only applies to those kinds of property of an incorporeal nature, which are advowsons, annuities, and rents. The 2 & 3 Wm. IV., c. 100, applies to cases of modus and exemption tithes. The 2 & 3 Wm. IV., c. 71, is entitled "An Act for Shortening the Time of Prescription in certain cases" applies (§ 1) to "claims which may lawfully made at the common law by custom, prescription, or grant in right of common or other profit on

be taken from or upon any land, &c., or such matters and things as are specially provided for, and except as, roads, and services;" (§ 2) "so way or other easement, or to any easement, or the use of any water;" and (§ 3) to the use of light. No as to the things comprised within this or "shall, when such right, profit, benefit (as is mentioned in § 1) shall have actually taken and enjoyed by person claiming right thereto, with- interruption for the full period of y years, be defeated or destroyed by ring: only that such right, profit, or fit was first taken or enjoyed at any prior to such period of thirty s; but nevertheless such claim may defeated in any other way by which same is now liable to be defeated; where such right, profit, or benefit have been so taken and enjoyed as said, for the full period of sixty s, the right thereto shall be deemed tute and indefeasible, unless it shall or that the same was taken and en- d by some consent or agreement duly made or given for that pur- by deed or writing." As to the s, enumerated in the second section, years of twenty and forty years are sively fixed in the place of the s of thirty and sixty years men- in the first section. Under the s section, which applies to lights, an tute right to light may be acquired twenty years' uninterrupted enjoy- t, unless the use has been enjoyed by e consent or agreement made or s by deed or in writing. The th section provides "that when any or water upon, over, or from which such way or other convenient water- or use of water shall have been yed or derived, hath been or shall be under any term of life, or any term ears exceeding three years from the ing thereof, the time of the enjoy- of any such way or other matter as s last mentioned, during the con- sence of such term, shall be excluded the computation of the said period erty years, in case the claim shall n three years next after the end or r determination of such term be re-

sisted by any person entitled to any re- version expectant on the determination thereof." Formerly it was necessary for all persons, who claimed in respect of an estate and had not the fee, to claim in the name of the person who had the fee, but under the last-mentioned Act "it shall be sufficient to allege the enjoyment thereof as of right by the oc- cupiers of the tenement in respect whereof the same is claimed, for such of the periods mentioned in the Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done."

This statute applies also to "any land or water of the king, his heirs, or succe- ssors, or any land being parcel of the duchy of Lancaster or of the duchy of Cornwall."

By the common law a man might pre- scribe for a right which had at any time been enjoyed by his ancestors or predece- ssors; but the statute of 32 Hen. VIII. c. 2, enacted that no person should "make any prescription by the seisin or possession of his ancestor, unless such seisin or pos- session hath been within threescore years next before such prescription made." This statute prevented any claim being made by prescription unless there had been seisin or possession within sixty years; but it still allowed the commence- ment of the enjoyment at any time within legal memory before the sixty years to be proved. The recent Act directs that "the respective periods of years theretofore mentioned shall be deemed to be the period next before* some suit or action wherein the claim or matter to which such period may relate shall be brought into question" (§ 4); but it only excludes proof of commencement of enjoyment, and it only gives the absolute right, when the several periods of years, reckoning backwards from the time of some suit or action wherein the matter is brought in question, are completed; and it neither excludes the proof nor gives the absolute right if there has been an interruption, within the meaning of this statute, which has been submitted to or acquiesced in "for one year after the party interrupted

* *Richards v. Fry*, 7 H. L.C., 408.

shall have had notice thereof, and of the person making or authorising the same." In these cases, if there has been seisin or possession of the ancestor or predecessor within sixty years, the statute of Henry VIII. will still apply, and evidence of the commencement of enjoyment within legal memory may still be given.

The Acts here enumerated do not apply to a claim "of a manor, a court-leet, a liberty, separate jurisdiction, treasure trove, wreck, waifs, and other forfeitures, fair, market, fishery, toll, park, forest, chase, or any privilege legally known as a franchise, as well as anything pertaining to those rights which come under the description of dignities or offices." (Mr. Hewlett's Reply, &c., to certain Evidence before the Select Committee of the House of Commons on Records, February, 1836.)

The term prescription is derived from the Roman law, but the meaning of the term in the Roman law is different. Blackstone says (iii. c. 17, note F.), "This title of prescription was well known in the Roman law by the name of *usucapio* (*Dig.* 41, tit. 3, s. 3), so called because a man that gains a title by prescription may be said *usu rem capere*." This remark is not correct. *Usucapio* in the Roman law was founded solely on possession as such [*Possession*], and it applied only to "corporeal things;" "by the laws of the Twelve Tables *usucapion* of moveable things was complete in one year; and of land and houses in two years." (*Gaius*, ii. 42.) "To *usucapion* was afterwards added, as a supplement, the *longi temporis prescriptio*, that is, an *exceptio* (plea) against the "*rei vindicatio*," the conditions of which were nearly the same as in the case of *usucapion*." (*Savigny, Das Recht des Besitzes*, p. 6.) The term *prescriptio* was properly applied to that which a plaintiff (actor) prefixed (*prescriptis*) to the formula by which he made his demand against a defendant, for the purpose of limiting or qualifying his demand. It seems afterwards to have been used as equivalent to *exceptio* or *plen*.

(Comyns, *Prescription*; Viner's *Abridgment*; Starkie, *Law of Evidence*; Blackstone, ii. c. 17.)

PRESCRIPTION has, by the law of

Scotland, a much wider operation than either by the civil law or the law of England, supplying the place of the Statute of Limitations in the latter system. It not only protects individuals from adverse proceedings which other parties might have conducted if the lapse of time had not taken place, but it in some instances creates a positive title to property. The prescription by which a right of property can be established is that of forty years—a period probably borrowed from the *Præscriptio quadraginta annorum* of the Romans. Whatever adverse right is not cut off by the other special prescriptions of shorter periods, is destroyed by the long prescription. It may be said generally to preclude the right of exacting performance of any claim, as to which no judicial attempt has been made to exact performance for forty years from the time when it was exigible. To create a title to real property, the long prescription must be both positive and negative. The party holding the property must, by himself or those through whom he holds, have been forty years in unchallenged possession of the property on a title ostensibly valid—this is called positive prescription; and the claimant and those whom he represents must have been forty years without an ostensible title, and must, by not judicially attacking it, have tacitly acquiesced in the possessor's title—this is called negative prescription. An action raised in a competent court interrupts the long prescription. It is usually stated in the Scottish law-books that it is interrupted by the minority of any person who could challenge the opposing right; but it would be more correct to apply in this case the phraseology of the French lawyers, who say it suspends prescription, as the years of minority are merely not counted in making up the period of forty years, while, when there is a judicial interruption, a new period of forty years commences to run. When the prescription applies to a pecuniary obligation, payment of interest or an acknowledgment of the obligation will interrupt it. It may be observed that, by a sort of analogy from the system of prescription, when there

Scotland any judicial inquiry as to equity of a custom, it is usual to lay the period of the inquiry to forty years sufficient to establish its having been from time immemorial. It has been the practice in the neighbourhood of Edinburgh for the proprietors of irrigated fields with the contents of city sewers—the system increased it became offensive to the neighbourhood—these proprietors produced evidence of their having continued the same for forty years; and although it being that time increased from an act only by the individuals immediately concerned with the practice, to prevent a public nuisance, these proprietors have, so far as the dispute has gone, been able to defend themselves on the ground of prescription.

Other and shorter prescriptions cut off particular descriptions of claims or debts of supporting them. By the law of twenty years' prescription, legal writings, not attested with the solemnities of Scottish writs, cease to be valid in judgment. An obligation by bond or suretyship is limited to ten years. Bills of exchange and promissory notes cease to have force after six years but the debts they represent, if they represent debts, may be proved by means. The quinquennial prescription cuts off all right of action, after the lapse of five years, on bargains provable by witnesses. It also protects agricultural tenants from a demand for rent after they have been five years removed from the land which the demand applies. The law of three years' prescription, is important. It cuts off claims on a farm for goods or services, the three years running from the date of the last payment; and also claims for each year's wages running a separate prescription, and ceasing to be exigible after three years from the time when it became due.

CENSORSHIP. [ADVOUSON; BELL.]
CENSORSHIP. [JURY; POLICE.]
CENSORSHIP OF, a regulation which has prevailed in most countries of Europe, and still prevails in many, in which printed books, pamph-

lets, and newspapers, are examined by persons appointed for the purpose, who are empowered to prevent publication if they see sufficient reason.

There are different modes of censorship; the universal previous censorship, by which all MSS. must be examined and approved of before they are sent to press; the indirect censorship, which examines works after they have been printed, and, if it finds anything objectionable, stops their sale and confiscates the edition, and marks out the author or editor for prosecution; the optional censorship, which allows an author to tender his MS. for examination in order to be discharged from all responsibility afterwards; and lastly, by a distinction which has been very commonly made between newspapers or pamphlets and works of a greater bulk, the censorship of the journals, which exists even in countries where larger works are free from this superintendence. All these forms of censorship imply an establishment of censors, examiners, inspectors, or licensers, as they have been variously called, appointed for the purpose, a provision quite distinct from the laws which define the various offences which a man may be guilty of by publication. These are repressive or penal laws, whilst the censorship, and especially the previous censorship, is essentially a preventive regulation.

The censorship may be said to be coeval with printing. In more ancient times, those writings which were obnoxious to the prevailing political or religious systems, if they fell under the eyes of men in authority, were condemned to be destroyed. Thus, all the copies of the works of Protagoras which could be found in Athens were publicly burnt by sentence of the Areopagus, because the author expressed doubts concerning the existence of the gods. Personal defamation and satire were also forbidden. Nævius at Rome was banished, some say put in prison, for having, in his plays, cast reflections on several patricians. Augustus ordered the satirical works of Libanius to be burnt, and Ovid's alleged or probable cause of exile was his amatory poetry. The senate under Tiberius condemned a work to be burnt, in which Cassius was

styled the last of the Romans. Diocletian ordered the sacred books of the Christians to be burnt, and afterwards Constantine condemned the works of Arius to the flames. All these, however, were penal proceedings independent of any censorship. The councils of the Church condemned books which they judged to be heretical, and warned the faithful against reading them. Afterwards the popes began to condemn certain works and prohibit the reading of them. In the time of Huss and Wycliff, Pope Martin V. excommunicated those who read prohibited books. The introduction of printing having awakened the fears of the ecclesiastical authorities, several bishops ordered books to be examined by censors. One of the earliest instances of this is that quoted by Johann Beckmann, in his 'Book of Inventions,' of Berchthold, Archbishop of Mainz, who in the year 1486 issued a mandate, in which, after censuring the practice of translating the sacred writings from the Latin into the vulgar German, a language, he says, too rude and too poor to express the exact meaning of the inspired text, he adverts to the translations of the books of the canon and civil law, works, as the archbishop says, so difficult as to require the whole life of man to be understood, a difficulty which is now increased by the incompetence of the translator, which renders obscurity still more obscure. His grace, therefore, setting a full value on the art of printing, "which had its cradle in this illustrious city of Mainz," and wishing to preserve its honour by preventing it being abused, forbids all persons subject to his authority, clerical and lay, of whatever rank, order, and profession, to print the translation of any work from the Greek, Latin, or any other language, into German, concerning any art, science, or information whatever, publicly or privately, unless such translation be read and approved of before being printed, and, when printed, before being published, and furnished with the written testimony of one of the doctors and professors of the University of Mainz, named by the archbishop, one for theology, one for law, one for medicine, and one for the arts. All who violated this order were to lose the book, pay a fine of one hundred

gold florins to the Electoral Chamber, and be excommunicated.

Then follows the archbishop's instruction to the censors—That no one in the province translate, print, or publish a book in German, unless the censors have previously read and approve its contents. And he directs them to refuse their approbation to such works as offend religion, morals, or whose meaning cannot be made out, and may give rise to error and scandal. To those works which they approve of they shall affix their approbation, two of them jointly, in the handwriting.

There were works printed at Mainz in 1479 bearing the approbation of the rector of that university, and there is an Heidelberg edition of 1480 of a book entitled 'Nosce teipsum,' which has four approbations, one by Philip of Heideck, Doctor utriusque Juris, and another by Maffius Girardo, Patriarch of Vepritsa, Primate of Dalmatia. There was, however, no general system of censorship till the fifteenth century, which was a freedom for printing; and it is a fact that the learned scholar Merula, in a letter to his friend Poliziano, dates the origin of the press, and expresses a wish that a previous censorship should be established over all such as Plato recommends for his country. "for," says Merula, "we are not yet overcome by a quantity of bad and insignificant books."

In 1501, Pope Alexander VI. issued a bull, in which, after sundry complaints about the devil who sows among the wheat, he goes on to say that, having been informed that by the art of printing many books, treatises, containing various erroneous and pernicious doctrines, have been published in the provinces of Cologne, Mainz, Treves, and Magentz, he by these presents strictly forbids printers, their servants, and all others to exercise the art of printing in any of the above provinces, to print any books, treatises, or writings, previously applying to the respective bishops, or their vicars and officials, whomever they may appoint for that purpose, and obtaining their licence and all expense, under pain of excommu-

a peculiar firm at the the respective archbishops, was general. The bull prohibited already printed and new are to be examined by writers, and those containing the prejudice of the Catholic Church.

In 1515, the Council of the said that in future no books were to be printed in any town or diocese, were previously inspected and signed, if at Rome by the master of the sacred palace, or dioceses by the bishop or appointed, and by the local diocese or those by him and countersigned by their grates and without delay. They were examined and countersigned, and the author or publisher.

It was the origin of the principal censorship of the press, and ever since maintained at Rome in all countries power to enforce it. The examiners in their respective but the tribunal of the however the Inquisition was were the censors; they excluded every work previous printed, and granted or refused licence at their. The Inquisition moreover all books published beyond its, and having examined it, condemned those which to the doctrine or discipline of Rome, and of these it known by the name of 'Index Books,' to which it adds additions from time to time several of these indexes, sent times and in different sides of the Spanish Inquisition from that of Rome; of these indexes have been of the latest is contained in the *Critique et Bibliographique des Livres condamnés au Feu, censurés*, by Peignot, Paris, 1816, where the Inquisition Index, such as France, England, the bishops acted as

censors and licensors of books, which they examined previous to printing, as to all matters concerning religion or morality. The censorship continued for a long time to belong to the ecclesiastical power, and even afterwards, when the civil power in various countries began to appoint royal censors to examine all kinds of works, the episcopal approbation was still required for all books which treated of religion or church discipline.

The Reformation greatly modified the censorship and reduced its powers, without, however, abolishing it; the power passed into other hands. In England the practice seems to have been to appoint licensors for the various branches of learning; but the bishops monopolized the principal part of the licensing power, as we find at the beginning of the reign of Charles I. in a petition of the printers and booksellers to the House of Commons, complaints against Bishop Laud that the licensing of books being wholly confined to him and his chaplains, he allowed books which favoured Popery to be published, but refused licensing those which were written against it. And Archbishop Abbot observed of Laud's licensing, "it seemed as if we had an expurgatory press, though not an index like the Romanists, for the most religious truth was expurgated and suppressed in order to the false and secular interests of some of the clergy." The system of previous licensing, however, did not always secure an author from subsequent responsibility. Thus Prynne's *Histriomastix* was condemned in 1636 to be burnt by the hangman, for being a satire on the royal family and government, and the author to have his ears cut off, and to be imprisoned and heavily fined, although the book had actually been licensed, but it was alleged on the trial that the licensor had not read the whole of the work.

A decree of the Star Chamber concerning printing and licensing, dated 11th of July, 1637, was issued in order to establish a general system on the subject. The preamble refers to former decrees and ordinances for the better government and regulating of printers and printing, and particularly to an order of the 23rd of June, in the 25th year of

Elizabeth, "which orders and decrees have been found by experience to be defective in some particulars, and divers libellous, seditious, and mutinous books, have been unduly printed, and other books and papers without licence." The decree enacts among other things that "no person or persons shall at any time print or cause to be printed any book or pamphlet whatsoever, unless the same book or pamphlet, and also all and every the titles, epistles, prefaces, proems, preambles, introductions, tables, dedications, and other matters and things whatsoever therunto annexed, or therewith imprinted, shall be first lawfully licensed and authorised only by such person and persons as are hereafter expressed, and by no other, and shall be also first entered into the registrar's book of the Company of Stationers, upon pain that every printer offending therein shall be for ever hereafter disabled to use or exercise the art or mystery of printing, and receive such further punishment as by this Court or the High Commission Court respectively, as the several causes shall require, shall be thought fitting." It then goes on to provide that all books concerning the common laws of the realm shall have the special approbation of the Lord Chief Justices and the Lord Chief Baron for the time being, or one or more of them, or by their appointment; that all books of history or any other book of state affairs shall be licensed by the principal secretaries of state, or one of them, or by appointment; and that all books concerning heraldry, titles of honour and arms, or otherwise concerning the office of earl-marshal, shall be licensed by the earl-marshal or by his appointment; "and further that all other books, whether of divinity, physics, philosophy, poetry, or whatsoever, shall be allowed by the Lord Archbishop of Canterbury or Bishop of London for the time being, or by the chancellors or vice-chancellors of either of the universities of the realm, for such books that are to be printed within the limits of the universities respectively, not meddling either with books of the common law or matters of state. And it is further enacted that every person and persons,

which by any decree of this or shall be appointed or authorised licence books or give warrant printing thereof, as is aforesaid have two several written copies of the same book, one of which shall in the public registry of the licenser, to the end that he may cure that the copy so licensed be altered without his knowledge the other copy shall remain in the hands of the owner, and upon both the said copies he or they that shall allow the book shall testify under his hand or hands, that there is no the book contrary to the Christ and the doctrine and discipline Church of England, nor against the state or government, nor against good life or good manners, or as the nature and subject of it shall require, which testimony shall be printed in the beginning of the book with the name of the licenser. And of the books coming from beyond the seas were to be reported by the merchant consignee to the Archbishop of Canterbury or the Bishop of London, remain in custody of the customs officers until the Archbishop or sent one of their chaplains or other learned man to be present with the master and wardens of the Company of Stationers, or one of them, at the time of the bale or package, for the purpose of examining the books therein contained. And if there is any schismatical, or offensive book among them, it was to be brought with to the Archbishop of Canterbury or the Bishop of London, or the High Commission Office, to be dealt with accordingly." All books, ballads, chapbooks, portraits were to bear the name of the printer or engraver as well as the author or maker. All printers were to take out a licence. Their names were fixed and their names were published.

The war between Charles I. and Parliament, and the abolition of royal authority, did not affect the press, and the Long Parliament maintained the plenitude of its power in maintaining the same practice just as the Star Chamber had done.

1642, an order of the Council of Parliament appointed by stationers of London to say lying, pamphlets scandalous, or the proceedings of the House of Parliament, did take away the printing, and apprehend the printers or

1643, was issued an order of and Commons assembled in for the regulating of printing suppressing the great late frequent disorders in printing scandalous, seditious, libellous pamphlets, to the action of religion and government that no book, pamphlet, part of any such book, paper, shall from henceforth be sold, stitched, or put to sale by or persons whatever, unless first approved of and licensed hands of such person or person or other of the Houses of shall appoint for the licenser, and entered into the of the Company of Stationing in ancient custom. And it authorizes or requires the wardens of the said company, or any other of the House of burgess of the Commons' their deputies, together with formerly appointed by the of the House of Commons for to make from time to time search in all places where they meet, for all unlicensed books, and all presses any way in printing of scandalous or papers, pamphlets, books, &c., or, deface, and destroy the in Common Hall of the said

in consequence of this order Milton wrote his 'Areopagitica'; for the Liberty of Unlicensed addressed to the parliament of in which he shows that the licensing originated with the nation, and that it ought not to be by a Protestant community out its usefulness and in observes that the order of

parliament is only a revival of the former order of the Star Chamber. Milton's disquisition is a piece of close reasoning and eloquently written, but it had no effect upon parliament, which continued to sanction the restraints upon the press, even after the abolition of royalty. A warrant of the Lord-General Fairfax, dated 9th of January, 1648, was addressed to "Captain Richard Lawrence, Marshal-General of the Army under my command," in virtue of an order of parliament, dated 5th of January, 1648, to put in execution the ordinances of parliament concerning scandalous and unlicensed pamphlets, and especially the ordinance of the 28th September, 1642, and the order of the Lords and Commons, dated 14th June, 1643, for the regulating of printing. The marshal-general of the army is "required and authorized to take into custody any person or persons who have offended or shall hereafter offend against the said ordinances, and inflict upon them such corporal punishments, and levy such penalties upon them for each offence as therein mentioned, and not discharge them till they have made full payment thereof, and received the said punishment accordingly." And he is further authorized and required to make diligent search "from time to time, in all places wherein he shall think meet, for all unlicensed printing-presses any way employed in printing scandalous and unlicensed papers, pamphlets, books, or ballads, and to search for such unlicensed books, papers, tracts, &c."

The parliament of 1654 appointed a committee to watch all blasphemous publications, on whose reports several books, religious or controversial, were ordered to be burnt.

The parliament of 1656 appointed a committee to consider the way of suppressing private presses and regulating the press, and suppressing and preventing scandalous books and pamphlets. The Protector Cromwell enforced these restraints in order to prevent the agitation of political questions. In October, 1655, the council at Whitehall ordered that no person shall presume to publish in print any matter of public news or

intelligence, without leave and approbation of the secretary of state. There appeared also an order of the protector and council against printing unlicensed and scandalous books and pamphlets, and for regulating printing. Cromwell however was disposed in general to rescue the victims of religious intolerance from the hands of their persecutors, the Independents and the Presbyterians.

After the Restoration, Roger Lestrangle was appointed licenser of printing. He wrote in 1663, 'Considerations and Proposals in order to the Regulation of the Press.' Lestrangle seems to have retained his office till the revolution of 1688, when he was succeeded by Fraser, who, it was said, was shortly after removed from his office for having allowed Dr. Walker's 'True Account of the Author of Eikon Basilike' to be printed. Edmund Bohun, a Suffolk justice, was appointed in Fraser's place. In a pamphlet printed in London in 1693, entitled 'Reasons humbly offered for the Liberty of Unlicensed Printing; to which is subjoined the just and true Character of Edmund Bohun, the Licensor of the Press, in a Letter from a Gentleman in the Country to a Member of Parliament,' there is a specimen of Bohun's licences: "You are hereby allowed to print and vend a certain book, and for so doing this shall be your sufficient warrant. E. B."

The act passed under Charles II., in 1662, which was, with few alterations, a copy of the Parliamentary ordinances concerning the licensing of printing, expired in 1679, but was revived by statute 1 Jac. II. c. 17, and continued till 1692. It was then continued for two years longer by statute 4 William and Mary, c. 24, and it expired in 1694, when the licensing system was finally abolished in England; but the question of its revival was repeatedly agitated in parliament, as we see by a paper dated 1703, entitled 'Reasons against restraining the Press,' which deprecates the intention of reviving the licensing system; and by a much later and bolder pamphlet dated 1729, styled, 'Letter to a Great Man concerning the Liberty of the Press.'

Under the old French monarchy, all

works previous to being printed were to be examined by the royal censors; and if approved, were signed with their permission. The French censorship was originally in the hands of the bishops for all matters concerning religion and ecclesiastical discipline. By degrees the bishops delegated this power to the faculty of theology, and the Parliament of Paris sanctioned the practice. The manuscripts were laid before the faculty, which appointed two doctors in divinity to examine them. The doctors made their report to the general assembly of the faculty, which approved or rejected the work. Prelates themselves were not exempt from this rule. The learned Cardinal Sadoletto, while Bishop of Carpentras, was refused permission to print a commentary which he had written on the Epistle of Paul to the Romans in 1532: Cardinal Sanguin was likewise refused permission to publish a work in 1542. As at that time a number of heterodox books were pouring into France from abroad, the Parliament of Paris, by a decision of the year 1544, authorised the faculty of theology to examine all books imported from foreign countries. Towards the beginning of the following or seventeenth century the great increase and accumulation of new books having induced the examining doctors to omit their reports to the assembly of the faculty, the assembly issued an order to the said examining doctors not to give their approbation to any works without mature consideration, under penalty of suspension from their office. In 1624 the faculty itself had divided into parties on some matters of controversy, Dr. Duval, the leader of one of the parties, obtained the letters patent for himself and three of his colleagues, by which they obtained the exclusive authority of approving books concerning religion and ecclesiastical discipline. The faculty remained against this innovation, but the king maintained his appointment. After Duval's death, the faculty resumed its old powers; but in 1653, the controversy concerning grace having given birth to a multitude of polemical works, causing which the faculty itself was divided.

on, the chamberlain Segnier took the censorship; and he created laws, with an annual stipend, to all works without distinction, but time it appears that works not with religion were excepted. The *Maîtres des Requêtes*, since 1555, the appointment of an *avocat* with the chamberlain, one styled *Royal Censeur*, and other was gradually increased, so distributed into seven classes, &c. to the nature of the works they had to examine, namely, jurisprudence, natural history, science, surgery, mathematics, and belles lettres (which class greatest number of volumes at 10); and lastly, geography, in, medals, and engravings, could be printed or sold unless previously examined and signed one of the Royal Censors, most of police had under him, who examined all dramatic shows they would be performed.

Censorship the censorship was 1. The religious censors were prohibited in mentioning against the principle of the liberty was, but amidst the struggle of this principle was often against journals and other works as to the ruling fiction of the world, and the authors or imprisoned or transported, and the whole period of the French Republic, liberty examined, but not in reality; and a experience of this that made question in Bonaparte's declaration the resolution of Bonaparte, Napoleon was proclaimed First of the French Republic, with more extensive than most kings, ten of the press attended his return. He said one day in the of State, that the character of all nations required that the press should be limited to a certain size; but newspapers still ought to be subject to the system of police. No newspaper established by the Council could the newspaper press was left

at the mercy of the executive. By a decree of the 25th Nivose, 1800, the number of newspapers at Paris was fixed, and the others were forbidden to insert any article "disparaging of the respect due to the institutions of the country, the sovereignty of the people, and the glory of the French arms," or offensive to the governments and nations which were the friends and allies of France, even if such articles should be extracted from foreign journals, under pain of immediate suppression. The *Moniteur* was announced to be the only official journal. The *Anti des Lois* was suppressed on the 2nd Prairial, 1800, by the order of the Council on the report of Lucien Bonaparte, Minister of the Interior, for having thrown ridicule on the members of the Institute. Under such discipline the number of subscribers to the newspapers of Paris dwindled rapidly from thirty to less than 10,000, and the *Moniteur* turned the attention to a subject of congressional. The Minister of the Interior had the censorship of dramatic compositions before they could be brought on the stage.

Napoleon was not friendly to liberty of any kind, and still less to that of the press. He felt very sore at the jibes and sarcasms of the English journals, which he had translated to him; and he believed that no work, however offensive, should be omitted. When the organic law was discussed in the Senate, which was to declare him Emperor, some one spoke of guarantees to be given to the nation, and mentioned the liberty of the press among the rest. Napoleon contradicted himself with appointing a committee in the Senate with the nominal office of protecting the liberty of the press, which was both a nonsense and a sin.

In 1810 there appeared an instance of unwarped book-censoring. A drama of Collin d'Harcourt, making part of the series of his works, bore the following license: "Seen and allowed to be printed and published, by decision of his Excellency the Senator Minister of the General Police, dated 5 Prairial, year 1810. By order of his Excellency the chief of the department of the liberty of the press, P. Lagarde." The Journal of the *Moniteur*

inserted this novel document in its columns; upon which the official *Moniteur* observed, in a tone of ill humour, that the Emperor had been surprised to learn that an estimable writer like M. d'Harleville should need permission to publish a work bearing his name; that there existed no censorship in France; that any French citizen could publish any book that he thought proper, being responsible for its contents before the tribunals, and pursuant to a decree of his Majesty, if charged with any thing derogatory to the power of the Emperor and the interests of the country.

In Napoleon's kingdom of Italy the censorship was likewise declared to be abolished, but on the day of the publication of a work two copies were to be deposited at the office of the Minister of the Interior. A commission, styled likewise "of the liberty of the press," examined the book and made its report to the Minister, who, if he saw reason, stopped the sale of the work, and ordered the author or printer to be arrested and tried. Those who wished to avoid such risks, were allowed to lay their MS. before the commission, which returned it with such corrections or suppressions as it thought advisable. This was called the facultative or optional censorship.

At last, in 1809-10, the project of a definitive law concerning the press in France became the subject of frequent discussions in the Council of State, in which Napoleon took a part. "I conceive," said he, "the liberty of the press in a country where the government is acted upon by the influence of the public opinion, but our institutions do not call upon the people to meddle with political affairs; it is the business of the Senate, the Council of State, and the Legislative Body, to think, speak, and act for the people, and the liberty of the press would not be in harmony with our system, for the manifestation of the power of public opinion would only be productive of disturbance and confusion." On the question of the censorship the more liberal councillors of state argued in favour of the optional censorship, by which authors who of their own accord laid their works before the censors, should be relieved

from further responsibility after publication. "Those councillors who previous and obligatory censor as Cambacérès, Molé, Pasquier, and Regnier, maintained that a publication was a species of teaching that in a country like France, where public instruction was so organized, it was not to be permitted to a dangerous doctrine, it would be insistent to allow writers to assume control of the mission of teaching as they pleased. No mode of teaching influencing the public mind could escape the vigilance of the authorities of the state. Under every government those who addressed publicly a number of persons were watched; *tiori*, those who by their writings dressed themselves to all men, be watched also. It had been erroneously that the right of public was a natural faculty; the art of printing was a social invention, and as such like all other inventions, to admit regulations in order to prevent abuse. Without the previous censorship the suppression of a mischief after publication came too late." of the Council of State of the 25th of October, 1809, in *The Histoire de la France et de Naples* 67.) Napoleon was not for the old and previous censorship, because it found itself placed in an awkward position especially with regard to certain which appeared to have a very heterodox tendency. He preferred optional censorship, leaving to the proper authorities the power of stopping the printing or seizing the copies of any work which they considered dangerous. He was inexorable in his offences against the state. The February, 1810, which was the result of these discussions, appointed a general of the press, with auditors, and censors, under the authority of the Minister of the Interior. A number of printers was to be appointed in every department; sixty was the number fixed for Paris: printers as well as sellers were to take licences of fidelity to their country and the law. Printers were forbidden to print

of the duties of subjects to sovereign, or of the interests

Parties offending were to before the courts, and punished by the Penal Code; besides the Minister of the Interior had depriving the printer of his fore setting up a work, the to transmit the title of it, with the author, if known, to the eral, and likewise to the pre- s-partement, declaring his in- ishish the work. The director- l, if he chose, ask for the M8., t to one of the censors for . After the censor had made the director would point out ions or suppressions in the thought proper, and which igatory upon the author or y however had the right of the Minister of the Interior, led the M8. to another censor, his report to the director- the director-general, assisted sors, decided finally upon the

er printers had the option of heir M88. to the examination re previous to printing. But ing examined, approved, and ick could be seized and its by the minister of police, who e to forward it with his re- in twenty-four hours, to the State, which judged finally well known instance of this d regard to Madame de Staël's many, which was seized after examined and printed, and tion was destroyed. "Your French, and we are not re- k for models among the na- ym admire," was the minister Savary) reply to Madame de estrances on the subject.

uted abroad could not be im- France without permission ctor-general.

e had the censorship of dra- intended for the stage. Only per was allowed in each de- ith the exception of Paris, e approbation of the respective sh was the condition of the

press in France during the latter years of Napoleon's empire.

At the first restoration of the Bourbons, in 1814, an article of the Charter of Louis XVIII. acknowledged that "Frenchmen had the right of publishing their opinions by means of the press, conformably however to the laws enacted for the repression of any abuse of the liberty of the press." Soon after, the Abbe de Montesquieu, Minister of the Interior, laid before the chambers the project of a law concerning the press, the effect of which would have been nearly to destroy its freedom. He proposed that all works of less than thirty sheets were to be subject to a previous censorship (*censure préalable*), excepting those in the dead or foreign languages, bishops' charges, pastoral letters, and catechisms and prayer-books, and memoirs of literary and scientific societies. This project was examined by a commission of the chamber, which rejected in its report the previous censorship. The article eight of the charter said that the law should *repress* the abuse of the liberty of the press, but the ministerial project by its previous censorship tended to *prevent* it by suppressing the liberty altogether. The discussion was warm. Montesquieu maintained that to prevent and to repress were synonymous. He at last agreed to exempt from the previous censorship all works of twenty sheets and above, instead of thirty. With this modification the bill passed both houses by considerable majorities. A council of twenty censors was appointed. The office of director-general of the press was retained. Every printer was obliged to give notice of each work that he intended to print, and to deposit two copies of it, when printed, at the director's office, before he published the work.

When Napoleon returned from Elba, in 1815, he did not enforce the previous censorship, because, said he, they had published whatever they pleased against him under the Bourbons, and the matter was now exhausted. The other regulations however concerning printing and publishing were maintained, and the press and the emperor were often at variance during the hundred days. The previous censorship was temporarily re-established.

and abolished again under the second restoration of Louis XVIII. After Charles X. came to the throne, he abolished the previous censorship altogether, and by so doing he gained a momentary popularity with the Parisians. But the press, and especially the newspaper press, did not show any great extent of gratitude for the boon, for it proved throughout his reign a sharp thorn in his side, as may be seen by the famous report of his ministers, upon which report the ordinances of July, 1830, were based. That report was attributed to M. Chantelauze, the keeper of the seals, but it was signed by all the ministers. It contains an able, an eloquent, and, in the main, a true exposition of the crafty and persevering course of conspiracy by which the press was constantly exciting or feeding a determined hostility towards the king and his government, casting suspicion upon and misrepresenting all their acts, even those which were evidently beneficial and liberal, because they proceeded from persons whom the press itself had rendered unpopular, appealing to the passions and prejudices of a susceptible and uninstructed multitude, and thus rendering, in fact, government impossible. This report is a very interesting historical document, and ought to be read by those who wish to form a dispassionate judgment of the press, and its powers for good and evil. "At all times," said the minister, "the periodical press had been, as it was in its nature to be, an instrument of disorder and sedition." Accordingly the first of the ordinances of Charles X., signed the 25th of July, suspended the liberty of the periodical press; no journal was to be henceforth published without a special authorization of the government, which was to be renewed every three months. All pamphlets or works under twenty sheets of letter-press were made subject to the same authorization. The ordinances however were resisted, and the revolution of July was the result. The revised charter which was afterwards promulgated, 'Charte de 1830,' in its seventh article, says: "Frenchmen have the right of publishing and printing their opinions, conformably to the laws. The censorship shall never be re-established."

New laws however were to repress the abuses of the press, which the law of the 9th of Sep. 1835, is, we believe, the latest. It specifies the crimes and misdemeanours committed by means of the press, and assigns the penalty to each. The proprietors of political journals are to deposit a considerable sum in the treasury as a security for their good behaviour. One hundred thousand (four thousand pounds sterling) deposit required for a daily Parisian paper, and one half the sum for a paper.

There is a material difference, in the constitutions which have been made for France, and for other countries, in the model of France, between the constitutional principle, such as liberty of the press, individual liberty, &c., and its application as modified by the codes of laws, which are chiefly those of Napoleon. However, the press is certainly more free in France than under Napoleon or the old monarchy, but it is still far from having attained wide uncontrolled freedom of the kind which exists in England, which may be truly said to be the freest in the world. The method of convincing oneself of this would be to pick out two or three more ultra-liberal English or Irish newspapers, and examine them according to the existing laws in France, which constitution is called the 'Code de la Presse,' and how often they would be found to be offended against the provisions of the code, and what penalties they would incur for each offence. The penalties in the French code of the press are severe.

The absolute monarchies of Russia, Austria, Prussia, and the other States, retain the obligatory previous censorship of the press, which is derived from the very principle of their government, that of parental authority over subjects. In some of the Italian States there is a double censorship; one ecclesiastical and the other by a political censor. But even then it happens sometimes that after a work has passed

and obtained the "imprimatur," being obnoxious is discovered which escaped the censor's penetration, and it is seized and confiscated.

In the republics of Switzerland, the censorship existed before the organic laws which have taken place in most cantons since 1830. All previous censorship is now abolished, but the laws of the cantons are very restrictive of the liberty of the press, and especially of the newspaper press, on matters of religion. Generally speaking the press is in the Protestant cantons.

In the last Spanish constitution, of art. 11, "All Spaniards may print and publish their thoughts freely, without censorship, but subject to the laws."

The determination of offences by the press belongs exclusively to the courts, and is not subject to the censorship.

The constitution of Portugal establishes no censorship, but refers to the laws for repressing the abuses of the press.

In the constitution of the kingdom of Greece of 1837, "the Hellenes have the right of publishing freely their thoughts and opinions; but, abstaining however from attacking the principles of the Christian religion; 2, offending decency or morality; 3, indulging in personal and calumny."

In the Swedish constitution of 1809, passed under King Charles XIII., it is provided that the states of the kingdom in a new Diet shall appoint a committee of members, well informed persons, of whom must be two jurists, for the purpose of maintaining the liberty of the press.

The committee will examine all laws which shall be laid before it by the author or book-seller, and if the committee declares that the work is fit to be printed, the author and publisher are forthwith discharged from all further liability. The Chancellor of Justice of the State is by right President of the committee. But this is a voluntary and not a compulsory previous censorship. Former resolutions of the Diet of books of controversy which attack established religion (the Lutheran or the Catholic) or support the rights of other constitutions, are excluded

from the liberty of the press. Persons guilty of libel and other offences by means of the press are tried by a jury. By a law enacted by the Diet in 1812, a newspaper which insults or defames a foreign government friendly to Sweden, is liable to be suppressed by order of the chancellor, without any other formality. This has occurred repeatedly, but then the paper appears again the next day under a slightly altered title; for instance, the *Argus* is suppressed, but is continued under the title of *Argus II.* or *Argus III.*

The constitution of Norway proclaimed in the Storting of Eldevold, November, 1814, enacts that no one shall be prosecuted for his printed writings, unless he wilfully and evidently manifests or encourages others to manifest disobedience to the laws, contempt for religion, morality, or the constitutional powers, or resistance to the constitutional authorities, or is guilty of defamation and libel against any one, in which case he shall be fined by the tribunals.

The constitution of the Netherlands of 1815, which is still in force in the kingdom of Holland, says, art. 227, "The press being the fittest means to spread knowledge, every one has a right to make use of it to communicate his thoughts, without needing previous permission. But all authors, printers, editors, or publishers, are answerable for those writings which attack the rights either of society or of individuals."

By art. 18 of the constitution of Belgium the press is declared to be free; no censorship can ever be established. Authors, editors, and printers are not required to give security. Offences committed through the press are tried by the ordinary courts.

In Denmark, an ordinance of Christian VII., dated September, 1799, on the subject of the press, abolishes the previous censorship, but imposes severe penalties on those who offend through the press; death is the penalty for any person who shall excite rebellion or provoke a fundamental change in the constitution of the monarchy. Whoever censures or defames, or excites hatred or contempt against the constitution of the kingdom and the gov-

verment of the king, either on general grounds or on the occasion of any particular act, shall be banished for life, and if he returns without permission, shall be sent to hard work for life. Whoever shall censure or vilify the monarchical form of government in general shall be exiled from three to ten years. Any libel against the person and honour of the king, or any member of the royal family, shall be punished with exile. Whoever publishes a work tending to deny the existence of God, or the immortality of the soul, or to cast censure or ridicule on the fundamental dogmas of the Christian religion, is to be banished likewise. Any one who shall attack or ridicule the tenets of the other Christian communions tolerated in the kingdom, shall be punished by a short imprisonment on bread and water. The same punishment is assigned to those who shall offend public morals by their writings. Any one defaming a foreign prince friendly to Denmark, or ascribing to his government any unjust or disgraceful act, without quoting any authority, shall be sent to hard work in a house of correction for a limited period.

The liberty of the German press, or the thing so called, varied in former times according to the spirit of the different governments. As long as the emperors of the house of Austria were under the influence of the Jesuits, they tried to establish certain rules in order to check the press equally all over the empire, and an imperial commission was appointed, which sat at Frankfort on the Main, to watch over the productions of a host of authors. The states of the empire however showed little deference to imperial orders; many of them allowed the press nearly complete freedom; and Saxony being foremost among them, the booksellers ceased to assemble at Frankfort, and chose Leipzig for the centre of their extensive trade, which it has remained ever since. King Frederick II. of Prussia granted liberty to the press "because it amused him;" but he cautioned the editors of newspapers "to act cum grano salis, and especially not to give offence to foreign states." The censorship was abolished in Bavaria in 1803; in Hesse and Mecklenburg it existed only

occasionally; and in Holstein the had always been free; but these exceptions, and in most of the Catholic states, especially in Austria, the press was most arbitrarily checked. The great exertions of the German nation put down the power of Napoleon and established most of their petty princes their thrones, seemed to deserve reward, and the princes consequently misused, in Art. 18 of the Act of federation, "that the diet should consist of itself in its first meeting with general rules concerning the press in Germany." The nation thought such rules would be in favour of liberty of the press, but it soon manifested that they were greatly mistaken in forming such sanguine hopes. Six of the minor states, however, abolished the censorship; as Nassau in 1814, Saxe-Weimar in 1815, and Saxe-Weimar in 1816. The political agitation of Europe after the downfall of Napoleon, and the desire of a new order of things, seemed to take the same turn in Germany as in Spain and Italy, caused the German rulers to hold a congress at Carlsbad in 1819, by which the German press was enslaved by the decision that all books or other printed publications under twenty sheets should be subject to a censorship. The spirit directed this censorship was most arbitrary and harsh, and led to collision the most dangerous kind between the representative bodies of the states and their rulers. Nor was the liberty of the press for books above twenty sheets respected; and political authors especially experienced many persecutions. Strangely enough, religious matters might be treated with perfect freedom.

The French revolution in 1830 produced most salutary effects in Germany. The people rose in arms, demanding constitutional rights, and above all, liberty of the press, and the rulers were in some cases compelled to grant their claims. In the new constitution of the elector of Hesse, it is said that the press and book trade shall enjoy complete liberty, and that the censorship shall only in cases specified by the diet. Similar laws were made in the kingdom

y and Hannover, in Brunswick and of the minor states. The most regulations for the press were issued by the chambers of the grand (or Elector, in December, 1831; but one of the French revolutionists then abolished the laws of Baden the press were declared by the diet, &c. to be contrary to the general law issued of Karlsruhe of 1819; and one in Baden was once more en-

acted. On the 28th of June, 1832, the order that was should be taken to the editors of newspapers and political productions to keep within limits in publishing the debates of parliamentary bodies, and the diet of Carlsruhe that editors of newspapers official writers should publish no one of such debates except those had in the government papers, or to form them. Since that time has been a visible reaction against freedom of the press, though the step is much more severe against all and historical publications than other works. It was hoped that some king of Prussia, who manifestly liberal sentiments when his son was threatened with a French war, would grant a free press; but as having ceased in 1841, the king first orders to adhere strictly to one of Karlsruhe, so that now only above twenty states are except the censorship. There are, however, of course in Prussia, as well the rest of Germany, for preventers from publishing works of a any contrary to the views of its monarch; for nearly all men of the attainments, living in the service government, express themselves to some consequences unless they not shrink the Great uncommenced, *graves sins*. A proof of the loss of the government in this respect strange change in the spirit of so Prussian authors since the accession of present king. Previous to this the worship of the philosophy of was almost necessary for obtaining under government: the present monarch, was known to be opposed, and an account was his king

than Hegel was abandoned by most of his disciples, and those who stuck to him were attacked without mercy. Great numbers of Prussian authors, who were not known for their piety before the king's accession, became known for it after. The only country where the press was free, in spite of the decrees of the diet, was the duchy of Holstein, as mentioned above; and the most liberal German works were printed and issued by the publishers at Altona; but since the dissensions between the German and the Danish populations of the kingdom of Denmark, the periodical press in that duchy has been restricted to such a degree that even suspicious music has not passed the censors of the censors, as we read in a late number of the *'Hamburger Correspondent.'*

In the political systems prevalent in Germany, censorship is one of the various functions of the police, a word which among the German theorists has a much larger meaning than we are accustomed to give to it. The direction of the censorship was accordingly in the hands of the ministers of police. The present king of Prussia, however, established an *Ober-Censur-Behörde*, or a commission charged with the direction of the censorship and the superintendence of the different censors in the provinces. A similar arrangement was lately made in Austria: the censorship was taken from the minister of police, and intrusted to a commission, as in Prussia, which is under the control of the minister of the interior.

(*Conversations-Lexicon, Supplement, Art. Pressefreiheit; Lexus, Annuaire; Vinteuil, Chronik des neunzehnten Jahrhunderts.*)

The constitutions of the various States comprising the North American Union admit the absolute liberty of the press. There is of course in each state a law of libel, sufficiently strict, concerning which it may be entertaining to read Cobden's account of his own trial, entitled *'A Republican Judge,'* under the assumed name of Peter Foreman. In the slave states there are very severe laws against interfering by the press with the great question of slavery. It has been stated

that abolitionist newspapers are seized at the post-office.

The republics of Spanish America likewise acknowledge the principle of the unfettered liberty of the press, however it may have been often violated in practice amidst the never ending factions and civil wars of those countries. The constitution of the Brazilian Empire establishes the freedom of the press without any censorship; but an author is liable to punishment in such cases as are provided by law.

(Beckmann, *History of Inventions*; Barton, *Diary*; *Encyclopédie Méthodique*, section "Jurisprudence," art. "Censure des Livres;" Thibaut, *Histoire de la France et de Napoléon Bonaparte*; Baquet, *Codes de la Législation Française*, 1843; *Collection de Constitutions et Chartes*, by A. Dufau, etc. Paris, 1830; and the other works and pamphlets quoted in the course of this article.)

PRESUMPTION. A presumption is variously defined. The following is a definition:—"A presumption may be defined to be a belief as to the existence of a fact not actually known, arising from its necessary or usual connection with others which are known." (Starkie, *Law of Evidence*, i. 23.) In another passage (p. 1234) the same definition is given in substance, with the word "inference" substituted for "belief."

A fact may be proved by the immediate knowledge of the witnesses to it, which is called direct evidence. If it cannot be so proved, some other fact may generally be proved by direct evidence, from which the fact in question may often be inferred. If such other fact can be proved, and the existence of the fact in question can be inferred, such inference is a presumption. The inference may be either strictly logical or necessary, or it may be only probable, that is, the fact inferred may be true or it may not be true. If we cannot infer from the fact proved that the fact in question may be true, there can be no presumption at all as to such fact. In all cases, then, in order to establish a presumption, there must necessarily be an inference from a fact or facts; but the inference may be either necessary or pro-

bable. If necessary, it cannot, by supposition, be disproved; if probable, it may either be disproved by evidence, or it may not be possible to disprove it want of evidence, and yet the inference will still only be probable.

Presumptions which are necessary hardly ever be considered as not conclusive in any system of law. Presumptions which are only probable no positive law be made as conclusive necessary presumptions, that is, it not be permitted to disprove them; they could be disproved; or where disproving evidence is wanted, as the inference is only probable, no law may give it the same conclusiveness as a necessary presumption.

A presumption, when established is, a fact when presumed, is legally same as a fact proved in such manner the particular system of law require fact to be proved. If, then, the law annexes any legal consequence to a fact when proved, it annexes the same when the fact is legally presumed is only by virtue of legal concept being annexed to facts that they be objects of jurisprudence. The element then of a presumption, in a sense, is only the establishment of a fact to which certain legal consequences annexed.

In our own system, the presumption sometimes made by a judge or a jury of judges, and sometimes by a jury, the consequences are the same. Writers say that presumptions are "legal and artificial" or "natural." They divide "artificial or legal presumptions" into two kinds, immediate and mediate. "Immediate are those made by the law itself direct without the aid of a jury. Mediate presumptions are those which cannot be made but by the aid of a jury." Presumptions may therefore be divided into three classes: 1, Legal presumptions made by the law itself, or presumptions of mere law; 2, Legal presumptions made by a jury, or presumptions of law and fact; 3, Mere natural presumptions, or presumptions of mere fact. (Starkie, p. 1241.)

The first class of presumptions

said, are either absolute and conclusive, or they may be rebutted by evidence to the contrary. The presumption of law that a bond was executed upon a good consideration, cannot be rebutted by evidence, so long as the bond is unimpeached, that is, so long as it is admitted to be a bond. But though the law presumes that a bill of exchange was accepted on good consideration, it admits evidence to show that such was not the fact. Now this presumption of mere law is nothing more than a fact presumed by a judge or judges, to which fact so presumed, that is, so taken to be true, certain legal consequences are annexed or belong. It is, however, a very inaccurate expression to speak of a presumption of mere law; for, as the same writer says (p. 1242), "when the law presumes or infers any fact to which a legal consequence is annexed from any defined predicament of facts, the law in effect indirectly annexes to that predicament the legal consequence which belongs to the presumed fact."

One presumption of mere law may be opposed by another, and the law, that is, the court, must then decide which is the stronger.

Presumptions of mere law, as shown, are such as are made by the court. There are instances of presumptions made by Act of Parliament, that is, the legislature has declared that a certain fact or facts, when proved, shall be conclusive proof of another unproved fact which is not a necessary, and, it may be, is often not a highly probable inference from the proved fact. A statute of 21 James I. c. 37 (now repealed), made proof of the concealment of the death of a bastard child by the mother conclusive evidence of her having murdered it, unless she could prove that it was born dead. Sometimes an Act of Parliament declares that a certain presumption shall not be allowed or made. (2 & 3 Wm. IV. c. 71, s. 6.) A presumption of mere law is sometimes called an *intendment of law*.

Presumptions of law and fact are "also artificial presumptions which are recognised and warranted by the law as the proper inferences to be made by juries under particular circumstances." (Starkie, p. 1245.) In other words, these are

facts which the law, that is, the court, will allow a jury to presume from other facts proved by direct evidence. When the presumed fact is declared by the jury to be a real fact, or is implicitly declared in their verdict, the legal effect is the same as if it were presumed by the judge. Indeed it is said "that the inference (made by the jury) is never conclusive," which appears to mean that there are presumptions which are not necessary, and sometimes may not be highly probable, but they are still such as a jury may make (at least under the direction and advice of the court), and their verdict will be good. "Thus a jury is required, or at least advised by a court, to infer a grant of an incorporeal hereditament after an adverse enjoyment for the space of twenty years unanswerd." (Starkie, p. 1244.) On this subject it is said in another passage (p. 1244): "the presumption of right in such cases is not conclusive; in other words, it is not an inference of mere law to be made by the courts, yet it is an inference which the courts advise juries to make whenever the presumption stands unrebuted by contrary evidence. Such evidence in theory is mere presumptive evidence; in practice and effect it is a bar."

The third class contains "the natural presumptions of mere fact." "They are wholly independent of any artificial legal relations and connections, and differ from presumptions of mere law in this essential respect, that those depend upon or rather are a branch of the particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind from the course of nature and the ordinary habits of society." (Starkie, p. 1245.) This class of presumptions properly belongs to a jury, and yet the courts will sometimes make presumptions of this kind without the aid of a jury. These presumptions then are such as a jury may make without the advice or direction of the court, and "it seems to be a general rule that whenever there is evidence on which a jury have founded a presumption according to the justice of the case, the courts will not grant a new trial." (Starkie, p. 1247.)

Though this division of presumptions is far from being characterised by precision, it cannot be denied that it is a kind of index to the practice of the courts as to presumptions. The division is founded—first, on the fact that certain presumptions, which are by no means necessary consequences from the facts proved, are admitted by the judges either as conclusive or as valid, till they are disproved; these presumptions are sometimes made by the court, but when it is necessary the court will permit or advise the jury to make them in order to arrive at a conclusion as to the fact in question: and, secondly, it is founded on the different functions of the judge and the jury, the former declaring the law, and the latter finding the facts, when their assistance for that purpose is necessary.

The presumptions of *mere law*, whether made by the court or by the jury under its direction, are really artificial rules of proof which have been established by judicial decisions, or which in any new case the court upon due consideration will make, and if necessary will direct the jury accordingly.

In those courts where there is no jury, one ground of the classification made by Starkie does not exist, and the judge makes his presumptions either in conformity to the technical rules of his court in cases to which they apply, or he makes his presumptions in cases where there are no technical rules, just as a jury does or any indifferent persons do upon facts submitted to them for their consideration.

Presumption then is either a positive rule by which a certain conclusion is declared by statute, or by the judges, or by the jury under the direction and advice of the judges, to follow from certain other proved facts; or it is a conclusion from certain other proved facts which a judge or a jury may make if they find the probative force of the proved facts sufficient to induce them to make the inference called by Starkie a natural presumption, or presumption of mere fact. Presumptions therefore are incident to every head of law in which proof is required; and the presumptions which are positive rules of law are part of the

law of the things to which. The subject of Presumptions is a part of the law of Evidence, and it requires a better discussion than yet received.

The term "presumptio" is used occasionally in the 'Digest,' and of an inference from a fact admitted. (*Dig.*, 22, tit. 3, general rule as to proof is, affirms must prove what "There are, however, facts to be presumed until the contrary presumptions; he who maintains the fact is accordingly relieved of it: the burden of proof is it is transferred to the opponent who maintains the non-existence of the fact; as for example, the existence of a right which has once been presumed, and consequently maintains that it has ceased must be proved by him who affirms that he has a right; he who affirms that he has a right is required to prove its acquisition; what is contained in his affirmation he still has it." (Puchta, ii. 183.)

(Bentham, *Rationale of Evidence*; Starkie, *On Evidence*.)

PRESUMPTIVE HE SCENT.]

PRICE. Political economy both of natural and necessary market price. The natural price of commodities, it is said, is as determined by the cost of production; in other words, by the amount expended on them; and equal quantities of labour produce equal quantities of labour for equal quantities of labour of ascertaining what are equal quantities of labour is not explained; and it is admitted that equality of labour is not to be taken into the account. The price is the same thing which the expression Real Value, is to be dependent solely on the labour necessary for the production of the thing. The market price or value is that value in exchange actually got for anything, which is always the same as the

natural or real; but the exchangeable value, it is said, never varies materially either above or below the real value. Accordingly the cost of production is considered to be that which regulates market price, when industry is not restricted; but this doctrine is sometimes assumed with a limitation: the things produced must be such as can be indefinitely increased in quantity by the application of fresh capital and labour to their production.

According to this doctrine labour is the measure of real value, and real value never varies much from exchangeable value. But labour itself requires a representative, something that shall measure one kind of labour compared with another; and gold and silver are commonly used for this purpose. But gold and silver also vary both in real value, as above explained, and in exchangeable value: the result of all which is, that there is no measure of the exchangeable value of anything other than the amount of gold or silver or anything else that can be got for it.

Things must be exchanged either by simple barter without any price being set on the things exchanged, or by an exchange of commodities in which exchange the commodities have a money value fixed upon them, or by giving gold or silver or other things which are current as money for commodities.

In nations called civilized the exchanges are actually made by giving stamped metal for other things, or by an arrangement which is equivalent to giving stamped metal, so far as concerns the price of things. The exchangeable value or the market price of a thing is therefore the money which it really brings.

Who has labour to offer for hire, and who by labour, or by labour and capital combined, which is the accumulated result of labour, produces a thing saleable, under the ordinary circumstances of society know pretty nearly what they can get for their labour; for the price which they will get is either a matter of contract with some determinate person or persons, or it is that market price which, as a general rule, varies during limited periods of time within certain limits and is tolerably well ascertained. The

principle which determines whether a man will continue to offer his labour for the hire or price which at any particular time he can have for it, or will continue to produce things for the price which at any particular time he may be able to get for them, is stated in *POLITICAL ECONOMY*.

Some writers who have laid down the doctrines of natural and market price as above stated, have, however, not overlooked the facts which are exceptions to the doctrine. Professor Tucker remarks (*The Laws of Wages, Profits, and Rent*, Introduction, p. 8), "All commodities may therefore be divided into two kinds as to their exchangeable value: one, that class which, being the product of man, will command as much labour in the market as it has cost to procure them; the other, the product in part of nature, in which the labour they will command may greatly exceed that expended in obtaining them, according to the proportion between the competition to possess them and the supply." The distinction here made is cited for the purpose of showing that some economists have perceived that the labour expended on things is not always the measure of their exchangeable value. It remains for economists to consider whether the labour expended upon anything can in any case with any propriety of language be considered the measure of its exchangeable value. Labour, it is affirmed, gives to everything its exchangeable value, which is true. It is also said that the amount of labour regulates or determines the exchangeable value. But it is admitted that the value of labour itself depends on the demand for it and the supply. Therefore, according to this theory, exchangeable value is regulated or determined by labour; the exchangeable value of which labour is determined by something else. The term labour is here of course used in its comprehensive sense, as including all means, material and not material, by which anything is brought into that form in which men desire to have it, and brought to that place in which the men are who desire to have it.

The terms *Natural Price* and *Real Value*, if they are taken to signify merely, the

they must be taken, the value which a man in his own estimation puts on the things which he has produced, may be convenient terms; though the word Natural is a word always liable to abuse, and Real is a singular kind of term to indicate the value which a man sets on his own labour. If he wants to keep the product of his labour for himself, he may call it by any name that he likes. But as a general rule, the real value of a man's labour, that which he can realize for it, is the value of it to others, its exchangeable value. The exchangeable value of a thing is its realization: the so-called Real value is idealization, which often fails to become Reality.

A man may admit that labour is the sole source of wealth, and of all exchangeable value, and that the cost of production is an essential element in the exchangeable value of all commodities, without admitting that the cost of production is the regulator of selling prices. He may contend that in the actual operation of exchanges it is the efficient demand, the will and the power to purchase, combined with the supply that really regulates the selling price of all things.

These two opinions are not so directly opposed as at first sight may appear. There are two ways of viewing the subject of exchangeable value. The mode which some economists adopt is to trace it from the operations of a rude and savage state to the complicated conditions of modern society—a process something like that of tracing government from a supposed state of nature to the actual condition of existing governments. There is nothing gained by this mode of viewing the subject, and it involves the introduction of certain hypotheses not necessary to the investigation. The other method is to view societies as they exist, and to analyse the complicated movements, in which consist their activity and energy. In this actual condition we know on what terms buyers and sellers meet in the market. Each brings to market what he does not want, and he gets what he can. Each knows that the other expects and desires to make a profit by the exchange, and that if there is not profit on both sides, or what both parties consider to be

profit, the exchange will not occur. Each therefore has his own measure of that which he would give in exchange, and he is moved to produce what offers in exchange by the general price of that which he gives in exchange. His power to produce and his means of production are therefore regulated in a moment by something which is foreign to his production and which regulates his production. The exchangeable value of a thing therefore, as determined by the selling price at a given time or the average of selling prices for a period, is in practice the real regulator of the labour of him who produces it. A man who ventures on the production of a new article can only guess at the price it will exchange for such a value, and he gives him a profit: and he is obliged to receive it. If he can produce a thing which is already in demand cheaper than has been hitherto produced, he has a chance of a profit, and a larger profit than before, unless his competitors in the market. Competition will reduce his rate of profit. Practice the selling prices of any given time or the average of such prices for a period, regulate the operations of producers both as to the quality and the amount of the articles which they produce. The producer has always a reference both to the cost of that which he produces and the probable price that he can get for it. The price that he can get determines the cost of his production, and he can determine the price that he can get for it; he does produce with reference to a price which he expects to get. The consumer who buys his commodity considers the cost of its production, and simply avails himself of the competition of the sellers to get it at the lowest possible price: if it is an article of necessity, he must buy so long as he has the means of buying; if it is an article of luxury, he will often do without it, if the amount of the supply does not allow him to buy on his own terms; and he leaves the producers to make the best of their way.

The difficulty of attaining clear conceptions on all such subjects as price is inseparable from the complicated

the elements which enter into them. A fault of most economical writers consists in the absoluteness of the principles which they lay down, for there is scarce no principle applicable to the relations of industry which is susceptible of being laid down in absolute unqualified terms. Another obvious fault some economical writers consists in analysing the operations of society they actually are, but in building up theories almost entirely on certain assumptions.

Adam Smith's opinions on Primogeniture are contained in his seventh chapter; upon which see the notes in the edition of Smith, published by Knight & Co., 1840: the notions of a modern school are contained in the article 'Political Economy' in the Edinburgh Supplement to the 'Encyclopædia Britannica.' This article, with the notes upon it by the Rev. J. Vickers, has been republished at New York.

PRIMOGENITURE may be defined to be that rule of English law by which title of dignity or an estate in land goes to a person in respect of his being eldest male. If a man dies seized of an estate, of which he had the absolute ownership, without having made any disposition of it by his last will, the whole descends to the heir at law, or customary heir; and the heir at law is such by virtue of being the eldest male person of the issue who are in the same degree of relationship to the person dying, or the representative of such eldest male. [DESCENT.] This is a case in which primogeniture operates. A common example of primogeniture is where a father dies intestate entitled to real estate, and without disposing of it by will, in which case his eldest son takes it all. If land is settled or entailed on a man and his male issue, the eldest son takes the land and the title, first as being a male, and then as being the eldest son. The law of primogeniture then only applies in the case of land when the owner dies without having made any disposition of it by will, or where the land is settled on a man and his male issue. It does not apply to the interest in land is a chattel interest, or a term of years, whatever

may be its duration; nor does it apply when real estate descends to daughters as coparceners.

At present, those who are the absolute owners of large landed estates seldom die without making a disposition of them by will. In the case of lands which are settled, the person in possession is generally tenant for life, and the inheritance is entailed on the eldest son. When the eldest son is about to marry, it is usual for the father and son to take the usual legal steps (which they can do as soon as the son is of age) to unsettle the estate and obtain the absolute ownership. They then resettle the estate, making the father tenant for life as before; the son, who was before tenant in tail, is also made only a tenant for life; and the inheritance is settled, as before, on the eldest son of the intended marriage. Such eldest son takes the estate, not as heir, and therefore not by the law of primogeniture, but he takes it as the person designated by the deed of settlement.

When a man happens to be tenant in tail, he usually takes the legal steps necessary (which he can do as soon as he is of age) to acquire the absolute ownership of the property, which he then generally settles again by deed or will, or disposes of absolutely.

It is usual in England to settle all large estates, and the object of the settlement is to keep the estates together, and to perpetuate them in one family; but there is a limit to this power of settlement. A man cannot, either by deed or will, settle his land, so as to prevent the absolute ownership of it from being obtained, for a longer period than a life or lives of persons in existence at the time when the settlement takes effect, and twenty-one years more.

Lands in GAVELKIND and BLOUGH ENGLISH are an exception to the general rule of law as to the descent of land.

The law of primogeniture then only operates in the cases already explained; and the system of settlements by which property is kept together in large masses is quite distinct in principle from the law of primogeniture. It is not the result of a law which favours primogeniture, but it is the result of the legal

power which an owner of land has over it, and of the habits of the people. The various reasons which have laid the foundation of this habit, and which perpetuate it, are foreign to the consideration of primogeniture as a rule of law.

In Virginia, after the Revolution, an Act was passed for converting estates tail into fee-simple, and at the same time the law of primogeniture was abolished. These laws have so far been in accordance with or have acted on public opinion, that a parent by his will now generally makes the same disposition of his property as the law makes in case he dies intestate. (*Tucker's Life of Jefferson*, i. 96, &c.)

(*Remarks on Primogeniture and Entails*; Hayes, *Introduction to Conveyancing*.)

PRINCE is the Latin word *princeps*, which was originally used to denote the person who was entitled *Princeps Senatus* in the Roman State. He seems to have been originally the *custos* of the city, and his office was one of importance. Subsequently it became a title of dignity, and the *princeps* was named by the censors. (*Liv.*, xxvii. 2.) Augustus adopted the title of *princeps*, as a name that carried no odium with it (*Tacitus, Annal.*, i. 1); and this became henceforward the title of the master of the Roman world. Accordingly the constitutions of the emperors are called *Principum* (*Gaius*, i. 2), or *Principales*. The word *princeps* is formed similarly to *anceps*, *municeps*, &c., and contains the same element as "*primus*." The word *prince*, which is derived from *princeps*, is now applied to persons who have personal pre-eminence, and especially to certain sovereigns of small states who possess sovereign power; and also to others who possess the title without sovereign power or anything that distinguishes them politically from other nobles or persons who enjoy privileges. But the word seems not to have acquired so definite a sense as that which belongs to king, duke, marquis, earl, and some others of the class; but rather to denote persons of high rank in certain states, as in Prussia, Russia, Italy, and other continental states, or persons who are junior members of sovereign houses.

In England it has sometimes the practice of the heralds to speak as the high and mighty prince; word seems rather to be restricted in its application to persons of the blood-royal, that is, a son, or nephew of a king; and it is probably be extended to the rest of the posterity of such persons, though has arisen in the course of the centuries. But in its application merely a term of common language being conferred, like the title of any formal manner; and even precedence which is given to blood respect to birth, and not to the of this word as a title of the eldest son of the king or queen is made Prince of Wales by creation.

PRINCIPAL AND

[AGENT.]

PRIOR, PRIORY, ecclesiastical denoting certain monastic foundations and the heads of such foundations differ in nothing essentially from abbot and abbey. The England religious houses, the which were called priors, and as powerful as many that had who was called the abbot.

Yorkshire there were two houses at great distance from each other, Roche and Nostel, the head of each being an abbot and of the latter though Nostel was the more ancient more considerable foundation, has the distinction respect to the which the house belonged; for had an abbot, while Fountains a prior, and yet both were houses. The prior of Saint Jerusalem was equal to any abbot the main we find the greater foundations presided over by them were called abbots, as Glastonbury, Tewkesbury, and ante-Norman foundation. In the there was both an abbot and when the abbot was regarded superior officer; and in the prior was often a second officer called prior.

PRISONS. [TRANSPORTATION] PRIVATE ACT. [PARLIAMENTARY] PRIVATEER, a private ship

at the cost of an individual for purposes of carrying on hostilities on account, but with the permission of the state, against the public.

It is the practice of most nations to punish assaults of this kind as lies to the public force. The of them are licensed to attack and the enemy, and their enterprise is urged by allowing them a large of any property which they may

It is usual for the country on which they carry on war to take for their duty respecting the neutrals and allies, and observing the law of nations. In Great Britain are empowered to sit out by letters of marque, which are by the crown upon application

Idem. (44 Geo. III. c. 72; *see*, *Commentaries*, i., p. 259; *i. commentaries*, 96.)

PRIVILEGE (*Privilegium*, from the which, however, it has been per- particular beneficial exemption in general rules of law. The sense of privilege is explained

Privilege is of two kinds; real, it to place, and personal, attaching to, as ambassadors, peers, members of parliament, and attorneys.

Only many places conferred the of freedom from arrest, even in matters, upon those who entered and even in later times many kind which privileged those with- from arrest in civil suits. Of the most notorious were White

the Tower, the Mint, and other in their neighbourhood. But by 31m. III. c. 27, the privilege of places was abolished. However, some time, no arrest can be made king's presence, nor within the of the palace of Westminster, nor place where he resides, nor in any way the king's justice are sitting (145).

Personal privilege, which from arrest, is enjoyed by, as, counsel, witnesses, or other attending any courts of record, or an arbitrator under a writ prime. This exemption is to quoted literally, and will not, be forfeited by taking refresh-

ment after a suit, or by going other than the direct road to or from a court. (*Comm. Dig.*, tit. 'Privilegia'). The privileges of the members of the House of Peers and of the House of Commons are stated under PEERS and PARLIAMENT.

PRIVY COUNCIL. (*Concilium regium*, *privatum*, *Concilium secretum* et *confidentium*, *concilium regium*). The privy council, or council table, consists of the assembly of the king's privy councillors for matters of state. During the existence of the Star-chamber, the members of the privy council were also members of that court. Their number was formerly about twelve, but is now indefinitely increased. The present usage is, that no members attend the deliberations of the council who are not especially summoned for that purpose. Members of the privy council must be natural-born subjects of England, and are nominated by the king without any patent or grant. After nomination and taking the oath of office, they immediately become privy councillors. Formerly they remained in office only during the life of the king, who chose them subject to removal at his discretion; but by 6 Anne, c. 7, the privy council continues in existence six months after the demise of the crown, unless sooner determined by the enunciation, and they are to choose the successor to be proclaimed. The privy council of Scotland is now merged in that of England, by 6 Anne, c. 6. The duties of privy councillors, as stated in the oath of office, are to the best of their discretion truly and impartially to advise the king; to keep secret his counsel, to avoid corruption, to strengthen the king's council in all that by them is thought good for the king and his land, to withstand those who attempt the contrary, and to do all that a good councillor ought to do unto his sovereign lord. By the Act of Settlement (12 & 13 Wm. III. c. 2) all matters relating to the government properly cognizable in the privy council are to be transacted there; and all the resolutions taken thereon are to be signed by such of the privy council as advise and consent to them. [CABINET.]

The court of privy council is of great antiquity; and during earlier periods of our history appears not always to have

The court of privy council is of great antiquity; and during earlier periods of our history appears not always to have

confined itself to mere matters of state. It had always and still has power to inquire into all offences against the government, and to commit offenders for the purpose of trial in some of the courts of law; but it often assumed the cognizance of questions merely affecting the property and liberties of individuals. This is evident from the complaints and remonstrances that so frequently occur in our history, and ultimately from the declaratory law of the 16 Chas I. referring to such practices. Probably the very statement of Sir Edward Coke, that the subjects of their deliberation are the "publique good, and the honour, defence, safety, and profit of the realm.... private causes, lest they should hinder the publique, they leave to the justices of the king's courts of justice, and meddle not with them," proceeded from his knowledge that such limits had not always been observed, and his jealousy of their invasion. Several other passages in his works seem to show that this was so. These encroachments, in one arbitrary reign, received the sanction of the legislature. By 31 Hen. VIII. c. 8, the king, with the advice of his privy council, was empowered to set forth proclamations under such pains and penalties as seemed to them necessary, which were to be observed as though they were made by Act of Parliament. It is true there was an attempt to limit the effects of this, by a proviso that it was not to be prejudicial to any person's inheritance, offices, liberty, goods, or life. The statute itself, however, was repealed in the first year of the ensuing reign. The king, with the advice of his council, may still publish proclamations, which are said to be binding on the subject; but the proclamations must be consonant to and in execution of the laws of the land. The attempts to enlarge the jurisdiction of the council appear always to have been resisted as illegal; and they were finally checked by the 16 Chas. I. c. 10. That statute recites that of late years "the council-table hath assumed unto itself a power to intermeddle in civil causes, and matters only of private interest between party and party, and have adventured to determine of the estates and liberties of the subject,

contrary to the laws of the land, rights and privileges of the subject, the same statute it is declared that neither his majesty nor council have or ought to have dictation in such matters, but ought to be tried and determined in ordinary courts of justice, and ordinary courts of law.

Subsequently, however, to this, in matters arising out of the jurisdiction of the courts of the kingdom, in civil and admiralty causes, and other matters, where the appeal lay to the king himself in council, the council continued to have cognizance, even though the questions related to the property of individuals. Wm. IV. c. 92, the powers of the court of delegates, both in ecclesiastical and maritime causes, were transferred to the king in council. The decisions being purely legal, it was expedient to make some alteration in the court, for the purpose of bettering it to the discharge of these duties. Instances had before where the judges had been called upon to give extra-judicial opinions in privy council; but the practice was convenient and unsatisfactory, and the necessity for it is now wholly removed. By the 3 & 4 Wm. IV. c. 41, the jurisdiction of the privy council was enlarged, and there is added to it the title "the judicial committee of privy council." This body consists of the keeper of the great seal, the chief justice of the King's Bench and of the Common Pleas, the master of the rolls, the chancellor of England, the chief justice of the Exchequer, the judge of the High Court of Admiralty, the chief justice of the bankruptcy court, and all the judges of the privy council who have taken the oaths, or have held the office of it, or have held the office of chancellor or any of the chief offices. Power is also given to the king by his sign manual to appoint other persons who are privy councillors to be members of the committee. By the 2, all appeals or applications in suits, and in all other suits or proceedings in the courts of admiralty, and

ly courts, or any other court in the dominions in America and other his Majesty's dominions abroad, which may, by law, statute, commission, or usage, be made to the high court of admiralty in England, or to the lords commissioners in council, shall be made to his Majesty in council; and such appeals shall be made in the same manner and form and at such time wherein such appeals have been made to the said high court of admiralty, or to the lords commissioners in council respectively; and all laws and statutes with respect to any such appeals or applications shall apply to any appeal to be made in pursuance of this Act to his Majesty in council; and § 3, of this Act, which relates to the nature of appeals whatever which either by or of this Act, or of any law, statute, or custom, may be brought before his Majesty, or his Majesty in council, from respect of the determination, sentence, rule, or order of any court, judge, or judicial officer, and all such appeals as pending and unheard, shall from the date of this Act be referred by his Majesty to the said judicial committee of the Privy Council; and that such appeals, and matters shall be heard by the said judicial committee, and a report or recommendation thereon shall be made to his Majesty in council for his decision as he shall think fit; and in the same manner as has been heretofore the custom in respect to matters referred by his Majesty to the whole of his Privy Council, or a committee thereof, the nature of the report or recommendation being stated in open court. The judicial committee are authorised to examine witnesses on oath, and to direct issues to be tried by a jury. The judicial committee have the same power of punishing contumacious and of compelling appearances, as his Majesty in council has the same of enforcing judgments, decrees, orders as are exercised by the high court of Chancery or the court of King's Bench.

A registrar is attached to the judicial committee, and he has the same privileges of a privy councillor, as those of mere honorary precedence, and those related to the security of his

person. If any one struck another a blow in the house or presence of a privy councillor, he was fineable. Conspiracy by the king's menial servants against the life of a privy councillor was felony, though nothing were done upon it. By 9 Anne, c. 16, any unlawful assault by any person on a privy councillor in the execution of his office was felony.

These statutes have, however, been now repealed, by 9 Geo. IV. c. 31, and any offence against a privy councillor stands on the same footing as offences against any other individual. (1 Co. Lit. 110, a, n. 5; 3 Inst., 182; 4 Inst., 32; 1 Blackstone, Com., 222; Hallam's Constitutional History.) [DELEGATES, COURT OF.]

PRIZE, property taken from an enemy. The term is generally applied to property taken at sea exclusively. The law of prize is regulated by the law of nations. Sentence of condemnation, that is, sentence that the thing captured is prize, and that consequently the property of its original owner in it is entirely divested, must be pronounced by a court of the capturing power duly constituted according to the law of nations. The prize court of the captor may sit in the territory of an ally, but not in that of a neutral. Questions of prize are by the English law disposed of in the courts of Admiralty. [ADMIRALTY COURTS.]

PRIZE-MONEY. All the Acts relating to army prize money have been repealed by 2 & 3 Wm. IV. c. 53, which also enacts that all captures made by the army shall be divided according to such general rule of distribution as the king shall direct. Apprisements and sales of prize and capture are made by agents appointed by the commanders and other commissioned officers. A certified list of the persons entitled to share in the capture is transmitted to Chelsea Hospital by the commanding officer. There is a penalty of 500*l.* for altering names. At the end of three months from the receipt of prize-money, the treasurer of Chelsea Hospital is required to notify in the 'London Gazette' and in two London morning papers that distribution will be made at the end of one month.

In this notification the share of an individual in each class must be declared. Shares of prize-money due to a non-commissioned officer or soldier, will be paid only upon personal application, or to his wife, or child, father or mother, brother or sister, or to the regimental agent of his regiment, or to any other regimental agent. If discharged, a certificate must accompany the application, signed by the clergyman and one of the churchwardens or overseers. Personating or falsely assuming the name and character of a person entitled to prize-money with fraudulent intent is punishable with transportation for life, or not less than seven years. By 3 & 4 Vict. c. 65, the Privy Council may refer to the High Court of Admiralty matters concerning booty of war (property captured by land forces). The Prize Court of the Admiralty is the proper court for deciding on matters captured by naval forces. [ADMIRALTY COURTS, p. 29.]

PRIZE COURT. [ADMIRALTY COURTS.]

PROBATE AND LEGACY DUTIES. These duties yield a sum exceeding two millions a-year. The legacy duty is charged on legacies of the value of 20*l.* and upwards out of personal estate or charged upon real estate, and upon every share of residue. Legacy to a husband or wife is exempt from duty. To a child or parent, or any lineal descendant or ancestor of the deceased, the duty is 1*l.* per cent.; to a brother or sister or their descendants, 3*l.* per cent.; to an uncle or aunt or their descendants, 5*l.* per cent.; to a great uncle or great aunt or their descendants, 6*l.* per cent.; to any other relation or any stranger in blood, 10*l.* per cent. The probate duty is payable on the total sum left by the deceased. For sums above 20*l.* and not exceeding 100*l.* the duty is 10*s.* if there is a will; and if there is no will the duty of 10*s.* is chargeable on sums of 20*l.* and not exceeding 50*l.* The duties continue to increase according to a certain scale up to 1,000,000*l.* The following tables show the operation of the legacy and probate duties for nearly half a century; and in *Porter's Progress of the Nation*, vol. iii. pp. 125-133, will be found some useful

and interesting considerations on duties as indications of the progress of national wealth:—

Duty received from 1797 to 1845 inclusive.	Legacies. £.	Probate and Testamentary Inven- tions. £.
England . . .	36,696,279	29,111,111
Scotland . . .	2,199,715	1,522,222
Ireland . . .	829,499	1,111,111
	<u>£39,725,493</u>	<u>31,744,444</u>
Duty received in 1845	£.	
England . . .	1,178,866	900,000
Scotland . . .	88,073	66,666
Ireland . . .	61,629	44,444
	<u>£1,328,568</u>	<u>1,011,110</u>

Return, showing the Amount of Duty on which the several Rates of Duty were paid in Great Britain, Year 1845, and an Abstract of Total Amount paid under each since 1797:—

Per Cent.	£.	Per Cent.	1797-1845
1 <i>l.</i> . .	34,087,848	1 <i>l.</i> . .	662,222
3 <i>l.</i> 10 <i>s.</i> . .	152,493	3 <i>l.</i> . .	200,000
3 <i>l.</i> . .	14,999,335	3 <i>l.</i> 10 <i>s.</i> . .	70,000
4 <i>l.</i> . .	9,774	4 <i>l.</i> . .	344,444
5 <i>l.</i> . .	1,809,196	4 <i>l.</i> . .	19,000
6 <i>l.</i> . .	318,359	5 <i>l.</i> . .	500,000
8 <i>l.</i> . .	29,778	6 <i>l.</i> . .	17,000
10 <i>l.</i> . .	4,606,920	8 <i>l.</i> . .	11,111
		10 <i>l.</i> . .	145,000
Total . .	£45,599,714	Total . .	£1,339,777

PROCESS VERBAL (*Procès-verbal*) is a term derived from French justice, in which it signifies a memoir or instrument drawn up and attested by officers of justice, containing a statement of the circumstances which have place upon the execution of a commission, upon an arrest, upon a pre-arrest or preliminary examination of an accused, or in the course of other investigations, and set forth in the manner in which they have occurred. This is now frequently applied to a contemporaneous detailed minute or note of a formal proceeding, though not occurring in the course of any legal inquiry instance, a note of the discussions which are taking place during the negotiation of a treaty.

PROCLAMATION. By the constitution of England, the king possesses the prerogative of issuing proclamations; for although this authority is exercised by the lord mayor in the city of London, and by the heads of some other corporations in other cities, for certain limited purposes, it is always founded upon custom or charter, and consequently only exists by delegation from the crown.

The nature and objects of royal proclamations are various. In some instances they are merely a promulgation of matters of state or of acts of the executive government which it is necessary that all persons should know, and upon notice of which, as presumed to be conveyed by a public proclamation, certain duties attach to subjects. Proclamations of the accession of a new king or a demise of the crown, and proclamations for reprisals upon a declaration of war with a foreign state, and for rendering coin current within the realm, are examples of this kind. Another class of proclamations consists of those which declare the intention of the crown to exercise some prerogative or enforce the execution of some law which may have been for a time dormant or suspended, but which a change of circumstances renders it necessary to call into operation. Thus the king might, by proclamation in the time of war, lay an embargo upon shipping, and order the ports to be shut, by virtue of his ancient prerogative of prohibiting any of his subjects from leaving the realm. [NE EXEAT REGNA.] A breach of the duty imposed or declared by a proclamation of this kind would be punishable, either as a contempt, or as a misdemeanor at common law. Another and the most useful class of proclamations issued by the crown consists of formal declarations of existing laws and penalties, and of the intention of government to enforce them, designed as some of the early books term *Regum terrorum populi*, and merely as admonitory notice for the prevention of offences. A familiar instance of this kind of declaration is the proclamation against vice and immorality appointed to be read at the opening of all courts of quarter-sessions.

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At present the royal prerogative does not authorise the creation of an offence by proclamation which is not a crime by the law of the land; in the language of Sir Edward Coke (3 *Inst.*, 162), "Proclamations have only a binding force when they are grounded upon and enforce the laws of the realm." In early periods of our history after the Norman conquest, the power of the crown in this respect appears to have been much more extensive, and instances of proclamations may be found in Rymer's *Fœdera*, and elsewhere, which imply an assumption of almost despotic power by the crown. In the reign of Henry VIII. it was enacted by the statute 31 Henry VIII. c. 8, that the king, with the advice of his council, might set forth proclamations under such penalties and pains as to them might seem necessary, which should be observed as if they were made by Act of Parliament; but this statute contained an express declaration that proclamations should not alter the law, statutes, or customs of the realm (Coke's *Reports*, part 12, p. 75), and was repealed about five years afterwards by the stat. 1 Edw. VI. c. 12. A strenuous attempt was made in the reign of James I. to strengthen the crown by increasing the prerogative of making proclamations, which, though encouraged and promoted by the lord chancellor Ellesmere and Bacon, was resisted by Coke, and occasioned great alarm and dissatisfaction among the people. The encroachments which had been made and attempted in this respect are enumerated and complained of in the 'Petition of Grievances' by the Commons, in 1610 (Howell's *State Trials*, vol. ii. p. 524); and in the same year it was expressly resolved by the judges (of whom Sir Edward Coke was one) that the king could not by his proclamation create an offence, which was not an offence before; 'for if so, he might alter the law of the land by his proclamation.' (Coke's *Reports*, part 12, p. 76.)

PROCTOR, an officer of the Ecclesiastical courts, whose business is that of an agent between his clients and the courts to which he is attached. It is a shortened form of the Roman term *procurator*. He

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stands in a similar situation to that of an attorney at common law or a solicitor in chancery. There are about 120 proctors now practising in the several courts of Doctors' Commons, London, which are four in number, the Court of Arches, the Prerogative Court, the Consistory or Consistorial Court of the Bishop of London, and the Admiralty Court.

In commencing a suit in any of these courts, the proctor is appointed by a proxy executed by the client, by which he constitutes him his agent, and promises to confirm all his acts as by law required in such suit. The proctor then proceeds to collect the facts of the case, and to apply to the court in his client's behalf, to draw allegations and interrogatories, and summon witnesses, whose evidence is taken down in private by the examiners, who are proctors appointed for that purpose. This evidence is deposited in the registry of the court in which the suit is brought, and is not allowed to be seen by any party until such time as the court may think fit to order publication. No *visu voce* evidence is received in these courts. After the necessary information has been collected and arranged, the proctor prepares his client's case, to be put into the hands of the advocates, to be by them brought before the court, if they deem it advisable.

In the case of wills, or administrations with the will annexed, that is, where the deceased has left a will, but has not appointed any executor, the executors or administrators are sworn to the due execution of the will of the deceased: and they make affidavit as to the amount of property, time of death, and other like matters. The proctor then makes a copy of such will or papers, and places it before the registrar of the court to be compared with the original; the copy, when thus compared, is returned to him with the probate under seal of the court attached. In cases of administration, he delivers in a formal account of the claims of the parties who apply for letters of administration, with an affidavit as to the value of the property and other particulars, and prays the court to decree letters of administration also under seal

of the court. These instrums then delivered to the executors administrators, and are their for distributing the property deceased according to his will, absence of a will, according to)

It is also the business of the p obtain licences for marriage, a plication of either of the parties contract such marriage, and to affidavit in which the party app the licence declares that he or s of no legal impediment to such. It is the proctor's duty to ex mature of this affidavit to his cl is then sworn to the truth of one of the advocates, who pointed surrogates, or depute judge. The affidavit is then in the Faculty Office, or the vicar-general, and licence under seal: this licence remains for three months.

The proctor in many cases ha the acts of his client, and for pose he is appointed a notary p his power as such extends ou ceedings in his own courts, as the general business of a notary official title of a proctor is public, and one of the procurator of the Arches Court of Cantue of the High Court of Admiralty.

The number of the proctors is p from increasing very rapidly by strictions on taking "clerk app only the thirty-four senior pro of them only such as are of fir standing in such seniority, are to take an article clerk, and is to take a second until the first h five years, and then only by p of the court. The term of artic seven years, which is legally on account of the notarial ap which they have to act. Now ing these regulations, the num materially increased. In the Charles II. there were only th procurators-general and ten metaries. The proctors wear a badge of office in court, an Arches a cape trimmed with er addition; and on certain occasi as upon admission or attending

first day of Term, a wig similar of a barrister. They are exempted from serving as jurors or parish

appeal from these courts is to the Committee of the Privy Council, where the process conducts in the same way as in the courts are' Commons, but is obliged to its assistance a barrister, in addition an ecclesiastical advocate, in an appeal-court held in Downham, but it is only for subsidiary in the case being done the Privy Council.

Courts are held in the common Downham' Commons, situated in Downham, in which are the offices of the judges and advocates, where have no iron, or regular but are very inconveniently distant the narrow streets near the

and to courts of the province of it to the different bishops' courts for bodies of processes, who differ trifling circumstances from these courts.

TRATOR FISCAL. [Advocate.]

III, one of the three parts into it that is derived from the soil by soil capital is distributed, the in parts being wages and rent; the three sources arise all the of the community. Profit is the surplus which remains in the after he has been reimbursed wages advanced and the capital during the process of production, a this surplus is the only object capital is employed.

have a tendency to fall in the in all branches of industry; the ratio of profit in proportion to employed be greater in one machine, more capital will be dis- that which affords the highest and the powers of production increased, the supply is greater, it, and the exploitation of profit fall. When the employment of is attended with extraordinary efforts are nominally high; but leaving the losses to which it is

exposed, the real profits tend to the same level as the ordinary rate. The possession of a particular occupation may induce those who pursue it to be content with a low rate of profit. Unless we reduce profits from their apparent to their real value, there is no truth in the maxim that the rate of profit is uniform in the same country at the same time.

The natural tendency of profits (whether arising from capital employed in agriculture or in manufactures) is to decline as the necessities of the population render it necessary to have recourse to inferior soils. Happily, improvements in machinery and in the art of agriculture, better combinations of labour and capital, and greater freedom of commerce, are calculated to arrest this retrograde movement; and to such sources of relief every highly advanced country must look as a means for sustaining its prosperity; for whatever diminishes the necessity of raising food from the poorest soils, tends to maintain the rate of profit.

Two other causes have great influence upon the rate of profit, namely, wages and taxation. A rise in wages will diminish profits, unless industry becomes more productive; but if production is increased both may rise at the same time, either in the same or in different proportions according to circumstances.

Taxation will diminish profits, unless wages fall or industry becomes more productive. Taxes on profits, when they fall alike upon all capital engaged in productive industry, are paid by the owners of capital, who have not the power of charging the tax upon consumers. The means of accumulation are diminished when the profits of only certain classes of traders are taxed, and they would betake themselves to other occupations not taxed, unless they could charge the consumers with the tax: the tax therefore falls upon the consumers.

The effect of the composition of capital in reducing the rate of profit has not been much discussed by writers on political economy. Mr. McCulloch says:—"Competition cannot affect the productiveness of industry, and therefore has nothing to do with the average rate of profit." In reply to this assertion, it has

been remarked (*Edin. Rev.*, No. 142, p. 443), that although the inferior fertility of newly cultivated soils be the immediate cause of the diminution of the rate of profit, yet it is nothing but the competition of capitalists which drives capital to seek the inferior soil, and induces its owners to be content with a lower rate of profit. The capitalists who had accumulated at the old rate of profit are content with a new investment producing a lower rate, instead of consuming their savings unproductively.

(Ricardo, *Principles of Political Economy and Taxation*, chaps. v. and xiii.; Mill, *Elements of Political Economy*, c. ii. sec. 3; and c. iv. sec. 6; McCulloch's ed. of the *Wealth of Nations*, note vii.; *The Laws of Wages, Profits, and Rent investigated*, by Professor Tucker, Philadelphia, 1837.)

PROHIBITION, a writ to prohibit a court and parties to a cause then depending before it from further proceeding in the cause.

A writ of prohibition may issue from any of the three superior courts of common law at Westminster, and also from each of the common-law courts of Chester and Lancaster. It is generally stated that a writ of prohibition may issue from the Court of Chancery; but the Court of Chancery acts by injunction addressed only to the parties, and does not interfere with the court.

It may be addressed by any of the three superior courts to any other temporal court; such as the Admiralty Courts, to courts-martial, a court baron, any other inferior court in a city or borough, to the Cinque-Ports courts, the duchy or county palatine courts, the chancery of Chester, the Stannary courts, the Court of Honour of the Earl-Marshal, to the Commissioners of Appeals of Excise, to any court by usurpation without lawful authority, or to a court whose authority has expired. When any one has a citation to a court out of the realm, a prohibition lies to prevent his answering. It seems also that it might issue to the Court of Exchequer and to the Court of Common Pleas; but not to the Court of Chancery, nor is there any instance of a prohibition to the King's

Bench. It may be granted by any of the three superior common-law courts to any spiritual court, and by the common-law courts of Chester and Lancaster to the spiritual courts within the county palatine and duchy.

The writ is grantable in all cases where a court entertains matter not within its jurisdiction, or where, though the matter is within its jurisdiction, it attempts to try by rules other than those recognised by the law of England. Matter may be said to be not within the jurisdiction of a court in two senses: 1, when the subject-matter entertained is in its nature not cognizable by the court; 2, when the subject-matter is in its nature cognizable by the court, but lies out of the local district where only that court has jurisdiction; or, in the case of a court whose jurisdiction is general, when the subject-matter lies in a local district exempt from the general jurisdiction of the court or where the subject-matter of the cause relates to persons over whom the court has no jurisdiction. The subject of prohibition comprehends the circumstances under which it is grantable, the person who may obtain it, and the form and incidents of the proceeding which heads belong to legal treatises.

If parties proceed after a writ of prohibition has been obtained and served, they are liable to an attachment for contempt.

(Comyns's *Digest*; Bacon's *Abridgment*; Viner's *Abridgment*; tit. "Prohibition," 2 *Inst.*, 599; 3 Blackstone *Com.*, c. 7.)

The power of the common-law courts to issue writs of prohibition, and the mode in which they exercised that power, have often been the subject of great dispute between the common-law judges and the ecclesiastics. The ecclesiastics have several times exhibited many articles of grievance before the parliament and privy council against the common-law judges. The most famous of these was the "Articuli Cleri," exhibited by Archbishop Bancroft, in the name of the whole clergy, in the third year of the reign of James I. They are given at length by Lord Coke (2 *Inst.*, 599), with

all view of the nature of the controversy between the parties, and the unanimous answers of the judges.

A system of law which contains so many exceptions to prohibition is an imperfect system. It does not seem inconsistent with the best system of law that a supreme court should have the power in certain cases prohibiting inferior courts from exercising jurisdiction. The power however is most necessary in a country in which the law has been developed out of many incongruous and conflicting elements, and there is a variety of courts, each of which has a separate jurisdiction, the result of which is that the superior courts by a kind of necessity must sometimes interfere to prevent wrong being done.

PROLOCUTOR. [CONVOCATION.]

PROMISSORY NOTE. [EXCHANGE, IL OF; MONEY.]

PROPERTY is derived, probably through the French language, from the Latin word *Proprietas*, which is used by us (li. 89) as equivalent to ownership (*dominium*), and is opposed to possession (*possessio*). The etymology of the Latin *proprietas* (*proprius*) suggests the sense of a thing being a man's own, which general notion is contained in every definition of property. A foreigner defines ownership or property to be "the right to deal with a corporeal thing according to a man's pleasure, to the exclusion of all other persons."

The definition excludes incorporeal things, which however are considered as objects of property in our law, and were also considered as objects of property in Roman law, under the general name of *jura in re*; they were considered as detached parts of ownership, and so opposed to *dominium*, a word which represented the totality of the rights of ownership. (Savigny, *Das Recht des Besitzes*, vol. i. p. 166.) This definition also defines property as consisting in a right, which word right is meant "a legal power to operate on a thing, by which it is essentially distinguished from the mere possession of the thing, or the physical power to operate upon it. Consequently a right is not established by

the possession of the thing; and it is not lost when the possession of a thing is lost. Such a right can also be enforced by him who possesses the right by an action in rem against every person who possesses the thing, or disputes his right to it" (Mackeldey, *Lehrbuch des heutigen Röm. Rechts*, li. p. 1:36.) This definition, which is characterised by more precision than that of Blackstone (li. 1), may be adopted, with this limitation, that to deal with a corporeal thing according to a man's pleasure, must not be such a dealing as will prevent other people from dealing with their property at their pleasure. The extent of this limitation is very indefinite; but such a limitation must be admitted as necessary. A man may destroy his own property if he likes, but the destruction must not be in such manner as to destroy any other man's property. By property then is here understood that which the positive law of a country recognises as property, and for the protection or recovery of which it gives a remedy by legal forms against every person who invades the property, or has the possession of it.

Austin observes ('An Outline of a Course of Lectures on General Jurisprudence') that "dominion, property, or ownership is a name liable to objection. For, first, it may import that the right in question is a right of unmeasured duration, as well as indicate the indefinite extent of the purposes to which the entitled person may turn the subject. Secondly, it often signifies property, with the meaning wherein property is distinguished from the right of possession. Thirdly, dominion, as taken with one of its significations, is exactly co-extensive with *jus in rem*, and applies to every right that is not *jus in personam*." The first sense of the word property is expounded by determining the quantity and quality of an estate as understood in English law. As to the second, possession is of itself no right, but a bare fact, and its relation to rights in rem is the same as the physical to the legal power to operate on a thing. The doctrine of possession is therefore distinct from and should precede the doctrine of property. The third sense of property has reference

to the legal modes of obtaining the possession of a thing in which a man can prove that he has property and a present right to possess.

A complete view of property, as recognised by any given system of law, would embrace the following heads, which it would be necessary to exhaust, in order that the view should be complete. It would embrace an enumeration of all the kinds or classes of things which are objects of property: the exposition of the greatest amount of power over such things as are objects of property, which a man can legally exercise—and connected with this, the different parts or portions into which the totality of the right of property may be divided or conceived to be divided: the modes in which property is legally transferred from one person to another, that is, acquired and lost: the capacity of particular classes of persons to acquire and transfer property as above understood; or, to take the other view of this division, an enumeration of persons who labour under legal incapacities as to the acquisition and loss of property.

The general division of property in the English law is into Things Real and Things Personal, the incidents to which are in many respects different in the system of English law.

Things Real are comprehended under the terms of Lands, Tenements, and Hereditaments. The word Hereditaments is the most comprehensive of these terms, because it comprehends every thing which may be an object of inheritance, both Things Real, and also some Personal Things, such as heirlooms, which are objects of inheritance.

Hereditaments are divided into Things Corporeal and Incorporeal. A Corporeal Hereditament is land, in the legal sense of the term. An Incorporeal Hereditament is defined by Blackstone to be "a right issuing out of a thing corporeal (corporeal), whether real or personal, or concerning or annexed to, or exercisable within the same." Perhaps the definition is not quite exact, and it would not be easy to make an exact definition. The Things Incorporeal of the English law correspond in their general

character to the *Res Incorporales* of Roman Law, one distinguishing character of which is that they are incapable of tradition or delivery (Gaius, ii.). the *Res Corporales* of the Roman are things which are capable of tradition, whether moveable, as a horse, or immovable, as a house. The Incorporeal hereditaments enumerated by Blackstone are, Advowsons, Tithes, Common Ways, Offices, Dignities, Francalties or Pensions, Annuities, Rents.

The interest which a man can have in any land, tenement, or hereditament is called an Estate; and this word comprises the greatest amount of power of enjoyment, both as to time and manner, which a man can legally have over any of the three things just enumerated, as well as the smallest amount of such power and enjoyment. It also comprises, under the notion of time, the determination of the time when his power and enjoyment commence, as well as when they cease. [ESTATE.]

With reference to an estate, the duration during which the right of enjoyment continues is usually expressed by the term Quality of Estate. The manner in which the enjoyment is to be exercised during this time is often expressed by the term Quantity of Estate; thus a man may enjoy an estate solely or in common.

A person may have the estate both as to quantity and quality in the manner above explained, either with or without the right to the beneficial enjoyment. The person who has merely the right to the enjoyment has the estate in quantity and quality but not the legal Estate. He who has not the right to the estate in quantity and quality has not the legal Estate, but merely the right of enjoyment of such estate, while the person who has not the right to the estate in quantity and quality but has the right to the beneficial enjoyment has the legal Estate. The term quality of estate is used to express this equitable interest, but inasmuch as we want a word to express the manner and mode of enjoyment, an estate as distinct from the right of enjoyment, and as quality is the word used to express that manner and mode, it must not be used in a different sense.

as I have said that this distinction is legal and beneficial or equitable is peculiar to the English law. (Blackstone, 1 T. B., 709, n.) But evidence of property existed in the law, and the theory of the distinction resting on property inchoate or inchoate, and beneficial, or legal, was fully developed. As to the Roman law is not certain; but probable conjecture that its origin resembled the origin of the law in English law, that it was the thought to get rid of the difficulties of the alienation of property by legal forms. "There is," says (B. 40), "among other nations (as) only one kind of ownership only (dominium), so that a man is owner or not; and it was the same old Roman law, for a man was owner 'ex jure quiritium,' or he is. But ownership was afterwards, so that one man may own the thing ex jure quiritium, and may have the same thing in bonis. For if in the case of a man he is not owner it is due by accident in jure quiritium, but only deliver thing subject will become property (in bonis), but it will remain only (ex jure quiritium), till you quit the property by alienation; from the time of alienation is lost, from that time it begins to be a full ownership (plene jure), that thing begins to be yours both in fact in jure, just as if it had been lost by mancipium or in jure."

This passage seems to support a view as to the origin of the distinction between legal and equitable property one of so much importance to law. The distinction between kinds of ownership or property thereby marked as in our system, it was not applied to all the parts which this divided or double title applied in our system.

It is the modes in which property is transferred from one person to another, and the legal capacity of property transfer and require notice in all instances, belongs to legal

Personal Property is not sufficiently described by the term "movables," for certain things in land are personal property, and are comprehended under the term Chattels Real. (Blackstone.) Things for years are in examples of chattels real; and they pass together with the rest of a man's personal estate in the executor, the universal successor. Chattels Personal are all other personal property, and are said by Blackstone "to be property and strictly speaking things moveable, which may be removed to or attended on the person of the owner, and carried about with him from one part of the world to another. Such are animals, household stuff, money, jewels, coin, garments, and everything else that can properly be put in motion, and transferred from place to place." Personal property is thus divided correspondingly to the division or divisions of the Roman law; but this is a very inadequate description of personal property as recognized by the English law. And besides we first perceive the greater certainty and distinctness of the law relating to real property compared with the law relating to chattels; the things which can be the objects of real property are definite, as well as the estates that can be had in them; the things that can be the objects of personal property are chiefly determinate, and the estates or more properly the interests, which a man may have in them, are perhaps also less determinate. An example of objects of personal property, which in no way occur within Blackstone's description, we may instance patent-right and copyright, which are things incorporeal, though not immovables, and are the objects of property in a sense.

A quantity of stock in the public funds is not money, though often looked at as such, but still it is property in a sense for it is a legal right to a perpetual annuity paid by the State, and it is a thing that can be bought and sold. Fees for life due to a minister or intimate are considered as property with respect to private and interest of administration; still they are not expressed by the term goods and chattels in the terms of administration, but by the term "cesses," for in relation

are not the property of a man to whom they are due, until he gets them, so they cannot become property simply because he happens to die.

The system of the English law as to the nature of property is peculiar, and the modes in which it can be acquired and transferred are also in many respects peculiar, especially in the case of Real Estate. The discussion of these matters properly belongs to legal treatises.

Property in Chattels may, like property in Things Real, vary as to quantity and quality of interest, though things personal are not capable of such extended and various modifications, analogous to estates, as things real are. As to quantity, that is, duration, a man may have the use of a personal thing for life, and another may have the absolute property in it after his death. As to quality, persons may own a thing personal as joint tenants and as tenants in common. There is an equitable property in chattels as well as in things real. Money, for instance, is often paid to a trustee, in order that he may give the interest of it to one person for life, and after his death pay the money to another. The trustee, so long as he holds the money, has the legal property in the money, and in the thing in which the money is invested. A legatee has only an equitable interest, even in a specific legacy, after his testator's will is proved, until the executor gives the thing to him, or in some clear way admits his right to it.

Property in a thing must not be confounded with a faculty or power to dispose of the thing in certain ways. A man may have a power to do a certain act with reference to property, without having any property in the thing; or he may have a property in the thing of a limited quantity, and also a power to dispose of the thing in a certain way. Thus a tenant for life, who has only a limited property in land, may have a power given to him to make leases, subject to certain conditions, of the property of which he is tenant for life.

The property which is called copyright or patent is not strictly property. It consists in a power to do certain acts, as to produce and sell a certain work or

print or machine; and the power or faculty is made effective by the duty imposed on everybody else of abstaining from making and selling such things. The things that are produced by virtue of such a power are objects of property, but the copyright or patent right is merely a power or faculty which is given exclusively to a determinate person or persons for a determinate time.

The notion of property is universal, though the particular rules as to property vary in different countries. Society rests on two things chiefly, marriage and the notion of property. The notion of marriage varies in different countries, but there is perhaps no set of people among whom it does not exist in some form. It is the foundation of the notion of a family, an essential element of a State. In fact the notion of marriage implies a species of property, which consists in the exclusive dominion which a man thereby obtains over a woman's person, and over the children which are the fruit of their union. A community of women is a thing as impossible as a community of property, to which the mass of mankind have an invincible repugnance founded on the natural desire of man to appropriate things to his own use. Fixed rules then for the acquisition and maintenance of property are essential to the existence of society and of government: without such rules there would be anarchy. Those who are suffering from abject poverty, and those who wish to enjoy without labour, may not recognise the necessity of these fixed rules: they have often a vague notion that they would gain something by the destruction of all existing appropriations of the wealth of society. But all or nearly all who have any property cannot fail to see that they would certainly lose something by such a change and might gain nothing. Those who see still more clearly into the nature of human society, know that there can be no increase of the national wealth, of which all industrious people receive a share, if those who labour are not secured in the enjoyment of that which they obtain by their labour. The enormous disparities which exist in most countries between the wealth of those

who have more than they can use and the pleasure of the great mass who live by their daily toil, often make even reflecting people for a moment imagine that things might be better arranged. But careful consideration finally establishes a general conviction that hard and stern as the laws are which punish all infringement of the rights of property, they are absolutely essential to the existence and well-being of society. The degree of the penalties and punishments which are inflicted on those who break the rules which guard each man's property, may often be excessive, and property may in latter instances be molested more by excessive punishment. But all experience and all sound reason combine to prove that the maintenance of the most unbounded wealth that an individual can acquire is as much the interest of every member of society as the maintenance to the poorest man of his daily earnings. No limits are consistently with the general interest to be placed on a man's power to acquire property by the employment of his capital, his industry, and his skill. Some limits may be properly put, but it is very difficult to say what they should be, on his power of giving that which he has acquired, and on his power of making dispositions of it which shall extend beyond his own life. [PARAGRAPHS.]

PROPERTY TAX. [TAX.]

PROFUGATION. [PARLIAMENT.]

PROSTITUTION. The history of prostitution would make a curious chapter in the history of society. It appears that in all countries and in all ages there have been women who have prostituted their bodies for hire. The practice has long existed in very different lights in different countries, but probably in all countries it has been attended with a certain degree of infamy.

As marriage and the formation of a family are the foundation of all society, anything which checks marriage or encourages promiscuous intercourse, must be considered as opposed to the general interest. But prostitution in some form or degree will probably always exist; and the object of good government should be to make such regulations, if any, as they reduce it to the least amount. There

is a difference between concubinage, or the regular seduction of unmarried persons, and that promiscuous intercourse which is fornication. Concubinage may externally appear a marriage, and the evil to society from bad example or disorderly conduct may be entirely absent, though there are reasons enough why it may often offend against good order and decency. The main disadvantage of concubinage in a political view is that the woman is deprived of all those rights to which marriage entitles her, and the children are exposed to neglect. It is, however, a thing which is best left to the control of positive morality. If the positive morality of any given society disapproves it, that is a sufficient check; if the positive morality looks on it as a matter of indifference, legislative enactments will be ineffectual.

The same principles do not apply to prostitution. The laws of all well regulated societies should interfere so far at least as to prevent open indecency and check any disturbance which may be caused in houses to which persons resort for fornication. But here also the positive morality of society will be the strongest check, when the positive morality of the mass is opposed to the irregular connection of the sexes. The practice of licensing prostitutes and subjecting them immediately to the control of the police is at least a matter of doubtful policy. Where it has long existed, there may be reasons for continuing this system; but there are weighty reasons against introducing it into any society where it has not been long established.

The most efficient check to prostitution will be the improvement of the early education of females of the poorer classes, from among whom the great mass of prostitutes come. The solicitation of charity proceeds from the male, and the temptation is money, which gives a woman the hope of living without labour and of indulging in dress and other things which her station in life does not allow her. The immediate inducements which lead women to surrender their chastity are no doubt as numerous and various as their condition and dispositions. But the temptation of money operating upon

verty and on the ignorance and inexperience of young women is certainly the most powerful of the causes of seduction. Those who would direct their efforts towards diminishing an evil which can never be entirely removed will succeed best by attempting to remove the main causes of it; by supporting every measure which will give to the labouring classes better wages, and secure to them a better and more practical education than they now receive.

As the solicitation of a woman's chastity proceeds from the male, whose passions are generally much stronger, seduction and its usual consequence, prostitution, would be most effectually checked by operating upon the propensities of the male. But it is not easy to suggest any efficient mode of doing this. All good education will contribute to this end by forming men to habits of greater self-control, and accustoming them to view the consequences to the whole of society as well as to themselves of every act of their lives.

The English law has few regulations on this subject, and it is very doubtful if any good would be effected by additional legislation. Brothels, or bawdy-houses, which is the name of houses kept for the resort of men and women, are common nuisances; and persons who keep such houses are punishable by fine and imprisonment. Fornication itself is an illegal act; and it is also punishable in the spiritual courts: but these courts perhaps seldom take cognizance of fornication now, except in the case of clergymen of the established church. Indeed, the practice of punishing fornication as such, either in courts of common law or the spiritual courts, is now fallen into disuse: the indecency or disorderly conduct with which it may be accompanied is punished. The positive morality of society is now the chief check upon fornication, and a check as efficient as any legislative provision probably would be. Some recent attempts to legislate further on this subject only show the ignorance of those who think that because a law is made it will for that reason be efficient.

PROTEST. [PARLIAMENT; LORDS, HOUSE OF; PEERS OF THE REALM.]

PROTEST. [EXCHANGE, HILL. &c.]

PROTESTANT, a general term comprehending all those who profess Christianity, and are not in the communion of the Church of Rome. There is a great variety of opinion among the persons thus separated, in points of faith, church order, and discipline, but this term comprehends them all.

The term originated in Germany. At the diet at Spire, in 1526, decrees had been passed which were so far favourable to the progress of the Reformation that they forbade any peculiar measures against it. The consequence was that the spirit of reformation gained strength, and spread itself more extensively in Germany. Then arose also commotions which were attributed to the reformed and to the spirit kindled by them. Both the pope and the emperor looked with increasing alarm on the aspect of affairs; and at another diet, held at the same place in 1529, the emperor directed an imperial brief to the persons assembled, to the effect that he had forbidden all innovation, and proscribed the innovators in matters of religion, who had notwithstanding increased since the decrees of 1526, but that now, by virtue of the full powers inherent in him, he annulled those decrees as contrary to his intentions. The peremptory tone of these letters alarmed the persons who were present at the diet; and particularly the elector of Saxony is reported to have said to his son that as former emperor had used such language, and that he ought to be informed that their rights were more ancient than the elevation of his family.

This strong measure of the emperor had also the effect of uniting, at least on this point, the two great sections of the German reformers, the Lutherans and the Sacramentarians, of whom Zuinglius was the head. However, the party opposed to the Reformation was the stronger, and the emperor's brief received the sanction of the diet. Upon this the reformers declared that this was not a business of policy or temporal interests, with respect to which they were ready to submit to the will of the majority, but it affected the interests of

signs and seditious. On this and a grounds they founded a protest, it was delivered in on the 16th day (April) but refused by the rest of the

A second protest, larger than the first, was presented on the succeeding

The princes and the cities who used the Reformation joined in it, and in 1529 it became usual to call the masses Protestants.

It is often found that a particular name leads to the constitution of a same religious party, which becomes exact, as in this instance, to parties have no immediate connection with particular incident, or interest in the case with which it is connected. The Protestant in fact seems to have as much to do with the constitution of the mass confederacy as with the prime of the Reformation; and certainly in England nor Scotland had any to do with the proceedings of the case or with the diet of Speire. The Reformed Church might seem to point the church of England or the church of Scotland more appropriately the Protestant church.

PROVINCIAL COURTS. [Ecclesiastical Courts, p. 802.]

PROVOST, a term having its origin entirely in the Latin *propositus*, which is the chief of any society, body, or society. In France the corresponding *provis* approaches nearer this form. In that country it is applied to the persons who discharge the duties of many different offices, but in ours it is rarely used: we believe the instances are those of the heads of the colleges, as Eton, King's College, &c. But in Scotland it is so designate the chief officer in cities, a provost of Edinburgh or of Gloucester in England the same officer had the name.

PROVOST-MARSHAL, a term adopted from the French, who call an officer similar functions, the *provis des armées de France*, or at least did so in the Revolution. The English government is attached to the army, very being to attend to offences committed against military discipline, to seize *excesses* disorders and other criminals,

to restrain the soldiery from pilfering and rapine, to take measures for bringing offenders to punishment, and to see to the execution of the sentences passed upon them.

PROXY. [Lords, House of; PARLIAMENT; PEERS OF THE REIGN.]

PUBLIC HEALTH. [TOWNS, HEALTH OF.]

PUBLIC PROSECUTOR. [ATTORNEY-GENERAL.]

PURIFIER. [ADDITION.]

PUNISHMENT. The verb to punish (whence the noun substantive punishment) is formed from the French *punir*, according to the same analogy as *furnish* is formed from *fournir*, *finish* from *finir*, *finish* from *finir*, &c. The French *punir* is derived from the Latin *poenire*, anciently *poenire*, which is connected with *poena* and the Greek *poine* (pain). *Poiné* signified a pecuniary satisfaction for an offense, similar to the *scorgeld* of the German codes: *poena* had doubtless originally a similar sense; but in the Latin classical writers its meaning is equivalent to that of our word punishment.

Punishment may be inflicted on men by a supernatural being or by men; and it may be inflicted on them either in the present life, or in the existence which commences after death. Punishment may likewise be inflicted by men on the more intelligent and useful species of animals, such as horses and dogs. In the following remarks, we confine ourselves to punishment inflicted by man on man.

The original idea of punishment was, pain inflicted on or endured by a person as a satisfaction or atonement by him for some offense which he had committed. (Grimm, *Deutsche Rechtsalterthümer*, p. 646.) According to this conception of punishment, it appeared to be just that a person should suffer the same amount of pain which he had inflicted on others by his offenses; and hence the origin of the retaliatory principle of punishment, or the *lex talionis*. This principle is of great antiquity, and is probably the earliest idea which all nations have formed concerning the nature of punishment. It occurs among the early Greeks, and was attributed by them to Quæ-

mythical prince and judge of Hades, Rhadamanthys. They embodied it in the following proverbial verse:—

ἢ καὶ πάθει τὰ καὶ ἵπται, διὰ καὶ ἴδιον γένοιο.
(Aristot., *Eth. Nic.*, v. 8.)

The *talio* was also recognized in the Twelve Tables of Rome (*Inst.*, iv. 4, § 7), and upon it was founded the well-known provision of the Mosaic law, "an eye for an eye, and a tooth for a tooth:" a maxim which is condemned by the Christian morality. (*Matth.*, v. 38-40; and Michaelis, *Commentaries on the Laws of Moses*, vol. iii. art. 240-2).

The infliction of pain for the purpose of exacting a satisfaction for an offence committed is *vengeance*, and punishment inflicted for this purpose is *vindictive*.

By degrees it was perceived that the infliction of pain for a vindictive purpose is not consistent with justice and utility, or with the spirit of the Christian ethics; and that the proper end of punishment is not to avenge past, but to prevent future offences. (*Puffendorf's Droit de Nature et des Gens*, viii. 3, § 8-13; Blackstone's *Commentaries*, vol. iv. p. 11.)

This end can only be attained by inflicting pain on persons who have committed the offences; and as this effect is also produced by vindictive punishment, vindictive punishment incidentally tends to deter from the commission of offences. Hence Lord Bacon justly calls revenge a sort of wild justice.

But inasmuch as the proper end of punishment is to deter from the commission of offences, punishment inflicted on the vindictive principle often fails to produce the desired purpose, and moreover often involves the infliction of an unnecessary amount of pain. All punishment is an evil, though a necessary one. The pain produced by the offence is one evil; the pain produced by the punishment is an additional evil; though the latter is necessary, in order to prevent the recurrence of the offence. Consequently a penal system ought to aim at economizing pain, by diffusing the largest amount of salutary terror, and thereby deterring as much as possible from crimes, at the smallest expense of punishments actually inflicted; or (as the idea is con-

cisely expressed by Cicero), "ut m ad omnes, poena ad paucos, perveniat" (*Pro Cluentio*, c. 46.)

It follows from what has been said that it is essential to a punishment to be painful. Accordingly, all the known punishments have involved the infliction of pain by different means, as desecration of the body, flogging or beating, privation of bodily liberty by confinement of various sorts, banishment, forced labour, privation of civil rights, pecuniary fine. The punishment of death is called *capital* punishment: or punishments are sometimes known by the name of *secondary* punishments. Moreover, the pain ought to be sufficient to deter persons from committing the offence, and not greater than necessary for this purpose.

A punishment ought further to be as far as the necessary defects of police and judicial procedure, will permit, certain, and also, as far as the differences of human nature and circumstances will permit, equal.

If a punishment be painful, and if it be of the proper amount, and if it be likewise tolerably equal and certain, it will be a good punishment.

The qualities just enumerated are those which it is most important that a punishment should possess. But it is sometimes thought desirable that a punishment should possess other qualities than those which we have enumerated.

1. Since the time when it has been generally understood that punishment ought not to be inflicted on a vindictive principle, the deterring principle of punishment (which necessarily involves an infliction of pain) has been sometimes overlooked, and it has been thought that the end of punishment is the reformation of the person punished. This view of the nature of punishment is erroneous, excluding the exemplary character of punishment, and thus limiting its effect to the persons who have committed the offence, instead of comprehending a much larger number of persons who may commit it. The reformation of criminals who are suffering their punishment is an object which ought to enter into a good penal system; but it is of subordinate

importance as compared with the effect of the punishment in deterring unconvicted persons from committing similar offences.

2. It is likewise sometimes thought that punishment is inflicted for the purpose of getting rid of offenders, or of rendering them physically incapable of repeating their offence. Death has often been inflicted for this purpose; and bodily disfigurements of various sorts have been inflicted for the same end; transportation has likewise been recommended on the ground of its getting rid of convicts. This view of punishment errs in the same manner as that just examined; inasmuch as it is confined to the persons who have actually committed offences. If all offenders were removed to a place of reward, they would be got rid of, but not punished. The principle of getting rid, or confinement, for the purpose of protecting society against the known dangerous tendencies of a person, is properly applicable in the case of insane persons.

A detailed account of the punishments which have been used in different nations may be found in different works on antiquities and law books. See, for the Greeks, Wachsmuth's *Greek Antiquities*, vol. II, part 1, p. 181; Hermann's *Greek Antiquities*, § 139; for the Romans,—Hanbold's *Éléments*, § 147; for the ancient Germans and for Europe generally in the middle ages,—Grimm's *Deutsche Rechtsalterthümer*, b. v., ch. 3; for modern France, *Le Code Pénal*, liv. 1; and for England, Blackstone's *Commentaries*, vol. iv.

The subject of *Secondary Punishments* (the principal of which are in this country transportation and imprisonment) is treated under *TRANSPORTATION*. We will here make a few remarks on the subject of *Capital Punishments*.

An idle question is sometimes raised as to the right of a government to inflict death as a punishment for crimes, or, as it is also stated, as to the lawfulness of capital punishment. That a government has the power of inflicting capital punishment cannot be doubted; and in order to determine whether that power is *rightfully exercised*, it is neces-

sary to consider whether its infliction is, on the whole, beneficial to the community. The following considerations may serve to determine this question respecting any given class of crimes. Death is unquestionably the most formidable of all punishments; the common sense of mankind and the experience of all ages and countries bear evidence to this remark. Moreover, capital punishment effectually gets rid of the convict. It may be added, as subordinate considerations, that death is the cheapest of all punishments, and that it effectually solves all the difficult practical questions which arise as to the disposal and treatment of convicted criminals. On the other hand, capital punishment, from its severity and consequent formidableness, is likely to become unpopular; and hence, from the unwillingness of judges and juries to convict for capital offences, and of governments to carry capital sentences into effect, uncertain. Whenever the infliction of capital punishments becomes uncertain, their efficacy ceases, and they ought to be mitigated. An uncertain punishment is not feared, and consequently the pain caused by its actual infliction is wasted. Capital punishments ought therefore to be denounced only for crimes which would not be effectually prevented by a secondary punishment, and for which they are actually inflicted with as much constancy as the necessary defects of a judicial procedure will allow.

The writings on the subject of punishment, and particularly of capital punishment, are numerous. Sound opinions on the nature and end of punishment are contained in the works of Grotius and Puffendorf; but Beccaria's well-known treatise first applied an enlightened spirit of criticism to the barbarous penal system of the continental states, but it cannot be read with much profit at the present time. The best systematic work on the subject is Bentham's *Théorie des Peines*, edited by Dumont. Some valuable remarks on the subject of punishment may likewise be found in the recent writings of Archbishop Whately and others respecting transportation.

PURCHASE, which is corrupted from the Latin word *Perquisitio*, is defined by Littleton (i. 12) to be "the possession of lands or tenements that a man hath by his deed or agreement, unto which possession he cometh not by title of descent from any of his ancestors, or of his cousins (*consanguinei*), but by his own deed." Purchase as thus defined comprehends all the modes of acquiring property in land by deed or agreement, and not by descent: but it is not a complete description of purchase, as now understood, for it omits the mode of acquisition by will or testament, which however, when Littleton wrote, was of comparatively small importance, as the power of devising lands did not then exist, except by the custom of particular places. Blackstone makes the following enumeration of the modes of purchase—Escheat, Occupancy, Prescription, Forfeiture, and Alienation. As to escheat, there is some difficulty in the classification, as the title appears to be partly by descent and partly by purchase; and alienation is here used in a larger sense than that which this term has in the Roman law, in which it does not comprehend acquisition by testament. Generally then, purchase is any mode of acquiring lands or tenements, except by Descent. [DESCENT.]

PURSER. [NAVY.]

PURVEYANCE (*purveyance*, a providing), a prerogative formerly enjoyed by the King of England, of purchasing provisions and other necessities for the use of the royal household, and of employing horses and carriages in his service in preference to all other persons, and without the consent of the owners. The persons who acted for the king in these matters were called purveyors. A privilege of the same nature was also exercised by many of the great lords. The parties whose property was thus seized were entitled to a recompense; but what they received was inadequate, and many abuses were committed under the pretext of purveyance. About forty statutes were passed upon the subject, many of them, like all the important early statutes, being a re-enactment of those preceding. Some of the most strict occur in the 36th year of Edward

III. The parliament of that year, which is said to have been held "for the honour and pleasure of God, and the amendment of the outrageous grievances and oppressions done to the people, and the relief of their estate," after a general confirmation of former statutes, immediately proceeds to enact five statutes on the subject of purveyance. These statutes confine the exercise of it to the king and queen, and provided that for the future "the heinous name of purveyor shall be changed into that of buyer;" they forbid the use of force or menaces, and direct that where purveyors cannot agree upon the price, an appraisement shall be made, &c. &c. The provisions of these statutes are very full, but they appear to have wholly failed in their operation, and other statutes were passed without effect. Several of the charges against Wolsey were the exercise of purveyance on his own behalf (4 *Inst.* 93.) In the time of Elizabeth two attempts were made in the same year by the Commons to regulate the abuses of purveyance. The queen was extremely indignant at this, and desired the Commons not to interfere with her prerogative. During the first parliament of James I., Bacon, on presenting a petition to the king, delivered his famous speech against purveyors, which forms a sort of compendium of the heavy charges made against them. Several negotiations took place in that reign for the purchase of the prerogative of purveyance, but nothing was done. Under the Commonwealth it fell into disuse. Purveyance was not formally abolished till after the Restoration. By the 12 Ch. II. c. 24, this branch of the prerogative was surrendered by the king, who received in lieu of it a certain amount payable on excisable liquors. Probably in the earlier periods of our history the existence of purveyance was almost necessary for the support of the royal household, especially during the progresses which were then so frequent. This seems almost a necessary inference from its continuance in spite of so many attempts to suppress it. Even after its final abolition by the statute Charles II. several temporary statutes were passed,

that will be the succeeding reign, for trial refusal on the occasion of progress. On behalf of the navy doctors, a statute to that effect was late as 21 and 22 Will. 3. den. 200; Bacon's Works, vol. vi. (Montagu's edit.; Hamer's Edit., Com. 287; 2 Inst., 22; 4 Inst.,

Q.

ALPHIFICATION. [CASE LAWS.]

ALITY OF ESTATES. [Puo-]

ANTITY OF ESTATES. [Puo-]

ARANTINE. Quarantine regula-

tion regulations, chiefly of a restrictive, for the purpose of preventing communication from one country to another of contagious diseases, by means of animals, goods, or letters. The quarantine originally signified a of forty days during which a person subject to the regulations in it. The period of forty days do which a widow entitled to dower main in her husband's name after his death is also called, in our law, the widow's quarantine. (Black-Commentaries, vol. 2, p. 175.)

Quarantine regulations consist in the giving of intercourse with the com- which a contagious disease is sup- prevail, and in the employment than precautionary measures to- given animals, goods, and letters from or otherwise communicating.

Men and animals are subjected stationary confinement, and goods face to a process of depuration, in to ascertain that the contagious is not latent in the former; and to it, if it be present, in the latter. tine regulations respecting nei- animals are therefore founded on the sion that the contagious poison, aving been taken into the constitu- of man or an animal, may remain in it for a certain time, and that sion of a certain duration is neces- in order to allow the disease time to

show itself, or to afford a certainty that the disease is not latent. Quarantine regulations respecting goods and letters are founded on the assumption that the contagious poison may be contained in goods and letters, and transmitted from them so as to communicate the disease to man.

The country from which the introduction of a contagious disease is apprehended, may either be contiguous with the country which establishes the quarantine regulations, or may be divided from it by the sea. Accordingly quarantine lines may either be drawn round a coast, as is the case in France, Italy, and Greece, with respect to the Levant, or they may be drawn along a land frontier, as on the frontier between Austria and Servia and Wallachia.

The contagious diseases which quarantine regulations are intended to guard against are plague and yellow-fever, and latterly cholera.

The principal disease, with reference to quarantine regulations, is the plague of the Levant; and in practice quarantine regulations are of little importance except with respect to the intercourse by land and sea with Turkey, Asia Minor, and Egypt, and some other of the Mohammedan countries bordering on the Mediterranean.

The disease styled plague, although formerly prevalent over the whole of Europe, is now nearly confined to the Levant; but its symptoms, morbid changes, history, and mode of propagation, bear so close a resemblance to those of the malignant typhus of this country, that it is difficult to regard them otherwise than as different types of the same disease. The plague of the Levant appears likewise to be generated by the same causes which generate typhus in this country, namely, filthy, crowded and ill-ventilated dwellings, want of personal cleanliness, defective drainage, and insufficient or unwholesome food. We believe it to be certain that, when the disease has been thus generated, it may, particularly under the influence of any of the causes which originally produced it, be communicated from one person to another. It seems likewise that its communication from one

person to another is promoted not only by filth, want of ventilation, and the other usual accompaniments of squalid poverty, but also by certain atmospheric causes, such as a certain state of heat, moisture, &c., respecting which we are as yet imperfectly informed. The plague therefore is both epidemic and contagious; that is to say, it may either be generated by local causes, which simultaneously affect a large number of the inhabitants of a country, or it may be communicated directly from one person to another. Where a disease is both epidemic and contagious, it is difficult to determine what proportion of the cases of it are due to local causes and what proportion to contagion. The analogy of typhus in this country would lead us to believe that the number of cases of plague in the plague countries produced by contagion is small as compared with the number produced by local causes. The invisible nature of the ordinary causes of plague and other epidemic diseases, and the simultaneous seizure of many persons in the same district, the same street, or the same house, have naturally led to the belief that the disease is in every case communicated from one person to another; according to the fallacy ingeniously exposed by Dr. Radcliffe, who, on being asked his opinion respecting the contagiousness of epidemic diseases, answered: "If you and I are exposed to the rain, we shall both be wet; but it does not follow that we shall wet one another."

This view of the ordinary causes of plague is likewise confirmed by the undoubted fact that the poor are the chief sufferers by it, and that it prevails most in the filthiest and worst quarters of towns.

From the fact of the plague prevailing principally among the poor, and rarely attacking the rich, it may be inferred either that the plague is produced exclusively by the filth, crowding, and bad food to which the poor are subject; or that if it be contagious, the contagion does not in general take effect upon the inhabitants of spacious and well ventilated houses, who are clean in their persons, orderly in their habits, and have a sufficient supply of wholesome

food. We see that diseases which appear to be contagious under nearly circumstances, prevail equally among the rich and poor; and that none of the physical advantages possessed by the latter afford any security against them. Thus, before the introduction of vaccination, small-pox was equally destructive to persons of all ranks in society; and contagious diseases which attack the rich, as measles and whooping-cough, make no distinction between the rich and the poor.

There seems to us to be no reason to doubt that the plague is contagious; in other words, that it can be communicated directly from one person to another—provided there be circumstances favourable to its transmission. A quarantine of persons may therefore be expedient in countries where the spread of the plague, supposing it to be introduced, is not probable. The duration of this quarantine ought to depend upon the period during which the disease may be communicated in a person who has taken it by contagion or otherwise.

Since the plague is a peculiar malignant and destructive fever, runs its course with a rapidity greater than typhus, there seems a good ground for concluding that its poison would not be long latent in the human body. The answers to the propositions of Malta respecting the plague in 1813, state that "the periods at which the disease made its appearance in different individuals after communication were various. It was generally the third to the sixth day; sometimes longer, even to the fourteenth day, not latter." (Dr. Maclean, *On Epidemic and Pestilential Diseases*, vol. ii. p. 10.) M. Ségur Dupeyron, the secretary of the Council of Health in France, states in his Report on Quarantine to the Minister of Commerce (May, 1834), that "physicians who have made a close study of the plague are pretty generally of opinion that its poison cannot be communicated in the human body more than five days; and the cases of plague introduced into the lazarettes confirm this opinion (p. 48). We believe that the case of plague which bore of late years occurred

the lazarettoes of Valletta, Marseille, Leghorn have broken out either at or shortly after the ship's arrival, on the line of French steamers was established, in 1837, between Marseille and the Levant, it was arranged the steamers coming from the east should perform their quarantine at Marseille. But in consequence of several cases of plague having broken out on board the steamers before they reached Marseille, the French government decided that they should perform their quarantine at the nearest disinfected station, namely Malta.

It is commonly assumed that actual or by actual contact is necessary in order to communicate the plague. "All cases against the plague (says M. de Dupeyron) are founded on the idea that, except within a very small space from the body, contact alone gives the disease. Consequently it is taken from ships with different degrees of health are often placed in the warehouse; and physicians who have visited plague-patients, without having touched them, are not put in quarantine, and are permitted to go about immediately after their visit" (p. 76). I believe the idea that actual contact is necessary for the communication of the plague to be utterly erroneous; and we take no doubt that under circumstances favourable to its communication, as filth, crowding, and want of ventilation, the poison of the plague may be introduced into the human system by inspiration through the lungs, as well as by the escape of the physicians, guardians, and others, who come in contact with the plague-patients at a short distance of the plague-patients in lazarettoes, by the supposition with the isolation, cleanliness, and ventilation of a well-managed lazaretto. The contagion of the plague is extremely feeble.

With respect to the quarantine of the plague, it may be remarked that, according to the belief commonly received in the Mediterranean, all living animals are capable of communicating the plague. Accordingly horses, asses, cattle, sheep are placed in quarantine upon importation. There is, we believe,

an idea among the Franks resident in the plague countries, that the horses cannot communicate the poison of the plague, but that it is frequently communicated by other animals, especially by cats. (See Maclean, vol. i. p. 202.) We suspect that there is no foundation for the notion that plague can be communicated by means of animals.

Goods carried in ships or by land are subject to quarantine, according as they belong to the class of susceptible or non-susceptible goods. Goods which are supposed to be capable of containing and transmitting the poison of the plague are called *susceptible*. Goods which are supposed to be incapable of containing and transmitting the poison of the plague are called *non-susceptible*. All animal substances, such as wool, silk, and leather, and many vegetable substances, such as cotton, linen, and paper, are deemed susceptible. On the other hand, wood, metals, and fruits are deemed non-susceptible. In Venice an intermediate class, subject to a half quarantine, is introduced between susceptible and non-susceptible goods (Séguir Dupeyron, p. 70); but this classification appears to be peculiar to the Austrian dominions. All susceptible goods are unladen in the lazaretto, and are there exposed to the air, in order to undergo a process of depuration.

The grounds of the received distinction between susceptible and non-susceptible articles must, we conceive, be altogether fanciful; since we cannot discover any evidence that the plague has ever been communicated by merchandise. Whenever the plague has been introduced into the lazarettoes of the Mediterranean, it has always been introduced by passengers or their clothes (Séguir Dupeyron, pp. 45-48). It may be added, that persons employed in the process of depurating susceptible goods have never been known to catch the plague, which could scarcely have failed to be sometimes the case, if the poison of the plague could be transmitted through goods. (See answer 28 of the Maltese Protomedico, in Maclean, vol. ii. p. 31.) It seems to be likewise supposed that some substances are not only non-susceptible, but

can even nullify the poison of the plague in susceptible articles. "At Trieste (says M. de Ségur Dupeyron), the juice of dried grapes is considered as a purifier; and consequently currants in susceptible wrappers are allowed to pass without the wrappers being subjected to any quarantine" (p. 72).

There appears, however, to be conclusive evidence that the clothes and bedding of plague-patients have transmitted the plague (Dupeyron, p. 32-71). We believe the danger of its transmission in this manner to be equal to the danger of its transmission by passengers.

We are not aware of any well authenticated example of the transmission of the plague by means of letters. Nevertheless, as paper is considered susceptible, letters coming from and passing through the plague countries, are opened and fumigated at the lazarettoes—a process which is often productive of mistakes, delays, and other inconveniences.

Every ship is furnished by the consul or other sanitary authority at the last port where it touched, with an instrument, styled a bill of health, declaring the state of health in that country. If the ship brings a clean bill of health, the passengers and goods are not subject to any quarantine. If she brings a foul bill, they are subject to quarantines of different durations, according as the plague is known or only suspected to have existed in the country at the ship's departure. On account of the prevalence of plague in the countries upon the Levant, they are considered as permanently in a state of suspicion, and no ship sailing from any of them is considered to bring a clean bill. The periods or quarantine vary from two or three to forty days; the usual periods are from ten to twenty days.

The building in which passengers usually perform their quarantine, and in which goods are depurated, is called a lazaretto. The most spacious and best appointed lazarettoes in the Mediterranean are those at Malta and Marseille.

The institution of quarantine originated at Venice, in which city the expediency of some precautions against

the introduction of the plague was suggested by its extensive commercial relations with the Levant. A separate hospital for persons attacked by the plague was established in an island near Venice in 1403; and the system of isolating passengers and depurating goods appear to have been introduced there about 1480. The system thus established in Venice gradually spread to the other Christian countries in the Mediterranean, and been adopted to a greater or less extent over all the civilised world. (See B. Mann's 'History of Inventions,' art. 'Quarantine,' vol. ii. p. 145.)

It is much to be desired that the result of an inquiry, by competent medical authority, into the grounds of the existing quarantine regulations in the Mediterranean, to be conducted under the direction of the chief European powers (which has been suggested by M. de Ségur Dupeyron, Dr. Bowring, and others), should be adopted. It cannot be expected that the causes of plague and the mode of communication will receive any aid from the semi-barbarians who inhabit the Mohammedan countries of the Levant. Moreover, quarantine regulations cannot be changed without the consent of different nations which are concerned in their enforcement. A reason why it is necessary for a nation to adapt its quarantine regulations to received opinions upon the subject, is plain in the following extract from a paper respecting quarantine regulations in the Mediterranean, which was printed in the Malta 'Government Gazette' the 19th December, 1838:—"The quarantine regulations of the English exist in the Mediterranean cannot be changed by the simple will of the English Government without producing inconveniences far greater than those arising from the existing system. If the English Government should change the quarantine regulations of Malta and its colonies in the Mediterranean without previously obtaining the approbation of the sanitary authorities of the neighbouring countries, the pratique granted those colonies would not be recognised elsewhere; and all vessels coming from any of those colonies would be

ed to a quarantine of observation (a night to fifteen days). The latter may extend to the ships of the enemy as well as to the merchant ships; so that no ship of war sailing to Malta could communicate with any of France, Italy, or Austria, without being previously subjected to a quarantine of observation. Malta, in particular, would suffer most severely by being thus given an essential guarantee to a pestiferous quarantine in the case of Valletta, and by subjecting all ships clearing out of that port to a quarantine of observation.

Italy would its transit-trade be not completely destroyed, but it would lose its importance as a quarantine. Its importance as a quarantine is now daily growing, on account of the establishment of the French route to the Levant, and the use of constant journey to India. It would, some, come to be a quarantine station as prizes were not received by the effect of health at Marseilles, and by other military authorities of the Government. In order therefore that quarantine regulations of the English law in the Mediterranean might be altered, it would be necessary that alterations should be made in concert with governments of the neighbouring European countries."

As small states of Italy are suspected we say, with justice, of shaming entire regulations for the purpose of securing commercial intercourse, since for the sake of the profit to be they forming not the quarantine dues, in hands of the English law respecting duties are mentioned in the 6 Geo. 4. c. 23. This Act also confers upon Queen in council extensive powers making quarantine regulations. A official abstract of the regulations enacted by this statute, and of the in council made under it, may be in McCulloch's *Commercial Dictionary*, article 'Quarantine.'

CAUSE IMPEDIT. [Barbanc, 6.]

CAUSE-REVISION. [Barbanc, 6.]

CAUSE. The *lexon* epse, which used to denote *maile, festival, conjur,*

as well as women of the highest rank. The use of it is to denote a princess who reigns in her own right, and possesses all the powers which belong to a male person who has succeeded to the kingly power in a state, is a modern application of the term.

In England the king's wife has some peculiar legal rights. She can purchase lands, and take grants from the king her husband; she has separate courts and officers, including an attorney-general and a solicitor-general; she may sue and be sued apart from her husband, have separate goods, and dispose of them by will. She pays no toll, is not subject to amercement, has a share in fines made to the king for certain privileges, which last is called *queen's gold*. Anciently manors belonging to the crown were assigned to her in dowry, but now the provision for her is made by a parliamentary grant at the time of marriage. It is treason to compass or imagine the death of the king's wife. To violate or defile her person is also treason, though she consent; and if she do consent, she also is guilty of treason. It has been the usual practice to crown the queen with the same kind of solemnities as are used at the coronation of a king. In the case of Caroline, the wife of George IV., who was living at the time apart from her husband, this was not done; but her right was most ably argued at the time by Mr. Brougham before the privy-council.

If a queen dowager marry a commoner, she does not lose her rank; but no one, it is said, can marry a queen dowager without special licence from the king.

A queen regnant, or princess who has inherited the kingly power, differs in no respect from a king. [Nas.]

QUEREN CONSORTE. [Queren.]

QUEFEMEN. [Quefemwaggen.]

QUIA EMPTORES. [Federalist, 78.]

QUI TAM ACTIONS. These have sometimes been called Popular Actions. A Popular Action is defined to be an action founded on the breach of a penal statute, which every man may sue for himself and the king. It is called a Qui tam action from the words used in the process; "*qui tam pro bono reip.*"

sequitur quam pro se ipso," "who sues as well for our lord the king as for himself." In a Qui tam action part of the penalty goes to the suer or informer, and part to the king. A strange instance occurred in 1844 of the legislature interfering to stop certain Qui tam actions against gamblers. [GAMING, p. 58, 59.] See also INFORMER.

QUIT RENT. [RENT.]

QUORUM. [SESSIONS.]

R.

RANGER (*Rangator*), an ancient officer in the king's forests and parks, appointed by patent, and enjoying certain fees, perquisites, and other advantages. His duty was of three kinds: 1, to make daily perambulations, to see, hear, and inquire concerning any wrong doings in the limits of his bailiwick; 2, to recover any of the beasts which had strayed beyond the limits of the forest or chase; and, 3, to present all transgressions at the next forest court.

RANSOM. [AIDS.]

RAPE. [LAW, CRIMINAL.]

RATE, an assessment levied upon property. Rates are of various kinds, and are denominated with reference to the objects to which they are applied.

The nature of Church-rates is explained under CHURCH-RATES: and rates for the relief of the poor under POOR-LAWS. The subject of County-rates is explained under COUNTY-RATES. There are also rates levied for the construction and repair of Sewers; and for other purposes.

READER, READINGS. [BARRISTER.]

REAL ESTATE. [PROPERTY.]

REBELLION. [SOVEREIGNTY.]

RECEIPT. In its more general and popular sense Receipt means a written discharge of a debtor on the payment of money due. When given for sums greater than five pounds, it must be stamped. The amount of the stamp duty varies with the sums for which it is given from 3d. to 10s.: in Ireland the lowest stamp is 2d. and the rates are otherwise

different from those in Great Britain. A receipt, though evidence of payment, is not absolute proof, and this evidence may be rebutted by showing that it has been given under mistake or obtained by fraud. The object of requiring a stamped receipt is to obtain revenue, and no other. It is one of the many modes of taxation. In 1832 the revenue from receipt stamps amounted to 193,065*l.*, namely: England 154,466*l.*; Scotland 16,344*l.*; Ireland 22,254*l.* The amount received in England on each kind of stamp was as follows:—

At Os. 3	.	£19,940
0 6	.	31,286
1 0	.	42,995
1 6	.	22,466
2 6	.	16,790
4 0	.	6,939
5 0	.	5,408
7 6	.	4,143
10 0	.	4,495

(Impey's *Stamp Act*; 55 Geo. III. c. 184; 3 & 4 Wm. IV. c. 23.)

RECEIVING STOLEN GOODS.

[LAW, CRIMINAL.]

RECIPROCITY ACT. [SHIPS.]

RECOGNIZANCE is an obligation of record, entered into before some court of record, or magistrate duly authorised, by which the party entering into it (the cognizor), whose signature is not necessary, acknowledges (recognizes) that he owes a sum of money to the king, or to some private individual, who is called the cognizee. This sum is named the amount of the recognizance. The acknowledgment is generally followed by an undertaking on the part of the cognizor to do some act, such as to keep the peace, to pay a sum of money, to attend to give evidence, and the like. On the performance of this act, the cognizor is discharged from his recognizance. On his default, the recognizance is forfeited, and he becomes indebted absolutely to the amount of the recognizance. A debt on recognizance takes precedence of other debts, and binds the lands of the cognizor from the time of its enrolment. If the recognizance is made to a private individual in the nature of a statute staple, for instance, he may on its forfeiture, by virtue of process directed to the sheriff, obtain delivery of

the lands and goods of the cognizor till the debt is satisfied, or proceed against the cognizor in an action of debt, or by *seire facias*. If the recognizance is made to the king, it was formerly, in all cases of forfeiture, estreated into the exchequer, and afterwards recovered by process from that court to the use of the treasury. But now, in the cases of forfeited recognizances taken before the court of quarter-sessions, or justices of the peace, provision is made by stats. 3 Geo. IV. c. 46, and 4 Geo. IV. c. 37, for their enrolment among the sessions records, and their immediate recovery by the sheriff. A list of the amounts, &c. is yearly returned by the clerks of the peace and town-clerks for their districts respectively, to the lords of the treasury. A power of appeal by the cognizor against the forfeiture is given to the sessions, and the sheriff is not to levy on the cognizor till the appeal has been decided. Where a recognizance has been estreated into the exchequer, that court may discharge or compound it according to the justice of the case. (Comyns, *Dig.* "Recognizance;" Dalton; 2 Blackstone, *Com.*; Burn's *Justice*.)

RECORD, COURTS OF. [COURTS.]

RECORDER (*Recordator*), a judge, described by Cowel as "he whom the mayor or other magistrate of any city or town corporate having jurisdiction, or a court of record, within their precincts by the king's grant, doth associate unto him for his better direction in matters of justice and proceedings according to law." The Norman term, *recordeur*, appears to have originally been applied to every person who was present at a judicial proceeding, and to whose remembrance or record of what had taken place the law gave credit in respect of his personal or official weight and dignity. Of this we perceive a trace in the ordinary writ of *Assens ad Curiam*, by which the sheriff is commanded to go to some inferior court (which, not being the king's court, is not a court of record), taking with him four knights, and there to record the plaint, which is in that court; the remembrance of the four knightly recorders of what they saw existing in the inferior court, in obedience to the king's writ, being treated as equivalent to their

actual presence at the proceeding to be recorded. So if the proceedings are in the sheriff's court, he is ordered by the writ of *Recordari facias loquellam* to cause the plaint to be recorded by four knights. And by a record of the eighth year of King John, we find that a judgment of battle in the court of the Archbishop of Canterbury being vouched in the king's courts, four knights were sent to inspect the proceedings, who returned "*quod recordati sunt*." (*Placitorum Abbrevisatio*, 54.) The practice of certifying and recording the customs of London by the mouth of the recorder, which is antecedent to the charters granting or recognising the practice, appears to be referrible to the same source. Where criminal or civil jurisdiction was exercised by citizens or burgesses, it would add to the importance of the court if its proceedings took place in the presence of an officer to whose record the superior courts would give credit, either in respect of his personal rank, as a peer or knight, or on account of his connection with those courts, as a serjeant or barrister-at-law.

Since 1835 the duties of recorders in cities and boroughs enumerated in the schedules of the Municipal Corporations Act (5 & 6 Wm. IV. c. 70) have been regulated by the provisions of that act and of subsequent statutes.

The jurisdiction of the recorder in places of minor importance than those mentioned in the schedules, is taken away. These Acts do not affect the city of London.

The recorder of London is a judge who has criminal and civil jurisdiction. He is also the adviser and the advocate of the corporation. In respect of the duties performed by the recorder in the assemblies of the corporation, in the courts of mayor and aldermen, of common council, and of common hall, his office may be said to be ministerial. He is by charter a justice of the peace within the city of London, and a justice of oyer and terminer, and a justice of the peace, in the borough of Southwark.

The business of the mayor's court, in which the recorder ordinarily presides alone, comprehends a court of equity. In the mayor's court the recorder tries

civil causes, both according to the ordinary course of common law and the peculiar customs of the city. The amount for which such actions may be brought is unlimited. Causes depending in the superior courts at Westminster for sums under 20*l.*, writs of trial are occasionally ordered to be executed by a judge of a court of record in London under statute 3 & 4 Wm. IV. c. 42, s. 17. Such trials sometimes take place before the recorder, and sometimes before the judges of the sheriffs' court.

All the duties of a justice of the peace, including those of chairman, devolve upon the recorder at the quarter and other sessions held at Guildhall for the city of London. At the eight sessions which are held in the year at Justice-hall in the Old Bailey for the metropolitan district, the recorder acts as one of the judges under her majesty's commission of oyer and terminer, and general gaol delivery. At the conclusion of each session he prepares a report of every felon capitally convicted within the metropolitan district, for the information and consideration of the queen in council, and he issues his warrant for the reprieve or the execution of the criminals whose cases have been reported.

The fixed annual salary of the recorder is 1500*l.* The Common Council have added 1000*l.* annually to the salary of the present recorder, and to that of his immediate two predecessors. Besides this, the recorder has fees on all cases and briefs which come to him from the corporation. He is also allowed to continue his private practice.

The recorder is elected by the court of aldermen, most commonly at a special court held for the purpose. Any alderman may put any freeman of the city in nomination as a candidate for the office, but an actual contest seldom takes place. The recorder elect is admitted and sworn in before the court of aldermen. The appointment is during good behaviour. The recorder has always been a serjeant-at-law or a barrister.

The recorder of London deriving his authority from charters, and not being appointed by commission (except temporarily as included with other judges in

the commission of oyer and terminer, &c. at the Old Bailey), he is not, like the judges of the superior courts, liable to dismissal by the crown upon an address by both Houses of Parliament. But all recorders may be removed for incapacity or misconduct by a proceeding at common law.

Deputy recorders have in some instances, but not very lately, been appointed by the court of aldermen on the nomination of the recorder. (*Report on Municipal Corporations.*)

In cities and boroughs within the Municipal Corporations Act, the recorder (who must be a barrister of not less than five years' standing) is a judge appointed under the sign manual by the crown during good behaviour: he has criminal and civil jurisdiction within the city or borough, with precedence next to the mayor.

Criminal jurisdiction is given to recorders by the Municipal Corporations Act, explained by subsequent statute. The 105th section of that Act provides that the recorder shall hold once in every quarter of a year, or at such other and more frequent times as he shall in his discretion think fit, or as the crown shall think fit to direct, a court of quarter-session of the peace, at which the recorder shall sit as the sole judge, and such court shall be a court of record, and shall have cognizance of all crimes, offences, and matters whatever cognizable by any court of quarter-session of the peace for counties in England, provided nevertheless that no recorder shall have power to make or levy any rate in the nature of a county rate, or to grant licence to keep an ale-house or victualling-house, to sell excisable liquors, or to exercise any of the powers by that Act specially vested in the town-council.

The jurisdiction of the county sessions extends, under 34 Edw. III. c. 1, to the trying and determining of all felonies and misdemeanors. The commission under which county justices are appointed, however, directs that if any case of difficulty arise, they shall not proceed to judgment but in the presence of one of the justices of the courts of King's Bench or Common Pleas, or of one of the justices

also; and courts of quarter-sessions and assizes have hitherto treated every in which judgment of death would be passed upon conviction, as a case of felony, and have left such cases to act at the assizes; and though no direction is contained in the great office of recorder or in the Municipal Corporations Act, it has been the usual practice of recorders appointed to the Act to refrain from the exercise of jurisdiction in such cases.

The civil jurisdiction given to recorders by 5 & 6 Wm. IV. c. 76, § 113, gives actions of assumpsit, covenant, debt, whether by specialty or by contract, and all actions of trespass for taking goods or chattels, provided the sum or damages to be recovered do not exceed £200, and all actions of ejectment between lord and tenant wherein the annual value of the premises does not exceed £200, upon which no fine has been paid, with an exception of actions in title to land, or to any title, toll, or fair, or other franchise is in issue in course, which before the passing of the Act had not authority to try as to which such titles were in question.

The enactment does not take the more extended civil jurisdiction previously existing in particular cases and brought by prescription charter.

In practice, or mode of proceeding, too the course of pleading, in courts of civil jurisdiction in cities and boroughs, governed by rules made by the recorder and allowed by three judges of superior courts.

RECORDS, PUBLIC. Records, in legal sense of the term, are contemporaneous statements of the proceedings and courts of law which are courts of record, written upon rolls of parchment. (Britten, c. 27.) Matters end among the proceedings of a court not connected with those proceedings, as deeds enrolled, &c., are not records, though they are sometimes in a sense said to be "things recorded," popular sense the term is applied to public documents preserved in a record repository; and as such documents cannot be conveniently removed,

or may be wanted in several places at the same time, the courts of law receive in evidence examined copies of the contents of public documents so preserved, as well as of real records. [COTTELL; LEXICONS.]

We may consider that as a record which is thus received in the courts of justice. The Act, for instance, which abolished Henry VIII.'s court of augmentation (of the revenues obtained from the suppression of the religious houses), declared that its records, rolls, books, papers, and documents, should thenceforth be held to be records of the court of exchequer; and accordingly we have seen many a document, originally a mere private memorandum, elevated to the dignity of a public record, on the sole ground of its official custody, and received in evidence as a record of the Augmentation-office. On the other hand, numbers of documents which were originally compiled as public records, having strayed from their legal repository to the British Museum, have thereby lost their character of authenticity. (*Proceedings of the Privy Council*, vol. v. p. 4, edited by Sir Harris Nicolas.)

"Our stores of public records," says Bishop Nicholson, "are justly reckoned to excel in age, beauty, correctness, and authority, whatever the choicest archives abroad can boast of the like sort." (*Preface to the English Historical Library*.) Indeed, this country is rich beyond all others of modern Europe in the possession of ancient written memorials of all branches of its government, constitutional, judicial, parliamentary, and local, memorials authenticated by all the solemn sanctions of authority, selling truly, though incidentally, the history of our progress as a people, and handed down in unbroken series through the period of nearly seven centuries. The amount of public care given to this subject during the last forty years, is shown by the appointment of successive commissions and parliamentary committees of inquiry, by a cost in one shape or another amounting to little less than a million of pounds sterling, and by the passing of no less than Parliament designed to effect a complete

change in the system of keeping and using the public records.

The greater part of records are kept as rolls written on skins of parchment and vellum, averaging from nine to fourteen inches wide,* and about three feet in length. Two modes of fastening the skins or membranes were employed, that of attaching all the tops of the membranes together bookwise, as is employed in the exchequer and courts of common law, whilst that of sewing each membrane consecutively was adopted in the chancery and wardrobe.

The material on which the record is written is generally parchment, which, until the reign of Elizabeth, is extremely clear and well prepared. From that period until the present, the parchment gradually deteriorates, and the worst specimens are furnished in the reigns of George IV. and William IV. The earliest record written on paper, known to the writer, is of the time of Edward II.

The handwriting of the courts, commonly called court-hand, which had reached its perfection about the reign of our second Edward, differs materially from that employed in chartularies and monastic writings. As printing extended, it relaxed into all the opposites of uniformity, clearness, legibility, and beauty which it once possessed. The ink too lost its ancient indelibility; and, like the parchment, both handwriting and ink are the lowest in character in the latest times: with equal care, venerable Domesday will outlive its degenerate descendants.

All the great series of our records, except those of parliament, are written in Latin, the spelling of which is much abbreviated, and in contractions, there can be little doubt, derived from Latin manuscripts.

During the Commonwealth, English was substituted; but soon after the Restoration, Latin was restored, and the records of the courts continued to be kept in Latin until abolished by Act of Parliament in the reign of George II. In certain branches of the Ex-

chequer, Latin continued in use until the abolition of the offices in very recent times. Many of our statutes from Edward I. to Henry V., and the principal part of the rolls of parliament, are written in Norman French. Petitions to parliament continued to be presented in Norman French until the reign of Richard II., whose renunciation of the crown is said to have been read before the estates of the realm at Westminster first in Latin and then in English. After this period we find English, which had doubtless always remained in use among the lower classes, often used in transactions between the people and government.

At the present time, besides the offices for modern records attached to each court, we may enumerate the following repositories, with their different localities, as containing the public records:—

The Tower, in Thames-street; Chapter-House, Westminster Abbey; Rolls Chapel, Chancery-lane; Rolls House, Chancery-lane; Duchy of Lancaster, Lancaster-place, Strand; Duchy of Cornwall, Somerset House; Common Pleas, Carlton Ride and Whitehall-yard; Queen's Remembrancer's Records, in Carlton Ride and tower of Westminster Hall; Augmentation-Office, Palace-yard, Westminster; Pipe-Office, Somerset House; Lord-Treasurer's Remembrancer, Somerset House; Land Revenue, Carlton Ride; Pell-Office, 1, Whitehall-yard; Exchequer of Pleas, 3, Whitehall-yard; First-Fruits Office, Temple.

The fullest examination into the state of the public records which has been made in recent times was effected by a Committee of the House of Commons, in 1800, conducted by Lord Colchester, then Mr. Abbot, and the report of that Committee presents the most comprehensive account which has yet appeared of our public records, to which a period of forty years has added very little. This Report originated a commission for carrying on the work which its authors had begun. The Record Commission was renewed six several times between the years 1800 and 1831, and altogether suspended at the accession of the present

* The rolls of the Great Wardrobe exceed eighteen inches in width.

all the several named commissioning thirty years retired, one then, that "the public records system were in many offices un-underscribed, and unnumbered; that they were exposed "to oxidation, and embolism," and filed in buildings inconducive to the preservation of the records; that the records were to be made and "originals to be printed." The present state record Office affords abundant evidence of the directions in an inventory expended the funds intended for printing records than in recording them. And it further shows that not withstanding the commission, records were not printed—and are still lodged in "unimproved" buildings. A bill introduced into the proceedings of the House of Commons in 1835, Report of the Committee was

During the last half-century there has been no regular expenditure of the public records. It is not known in total amount or the proportion of it; but the following may be received as an approximate statement:—

Stationery Papers show that were made on of the Record Commission between 1830 and 1835 and 1839 in- 1834 and 1839 in- Sec. for the custody of total total in an average year 1835, 1836, and 1837 of Records, estimated total Commission, total at . . .	£202,600 125,700 120,000 120,000 30,000 758,300 120,000
--	---

£878,300

Of the grants made to the record commission, by far the greater part was spent in printing and the expenses connected therewith.

An Act was passed (1 & 2 Vict. c. 49) calculated to remedy effectually what preceding efforts had in vain attempted, by constituting a special agency for the custody of the records; to the want of which and a sufficient responsibility, all the defects of the old system are attributable. By this Act the Master of the Rolls is made the guardian of the public records, and he has power to appoint a deputy, and, in conjunction with the treasury, to do all that may be necessary in the execution of this service. The Act contemplates the consolidation of all the records, from their several and separate, into one appropriate repository; their proper arrangement and repair; the preparation of calendars and indexes, which are more or less wanting to every class of records; and giving to the public more easy access to them. Lord Langdale, the present Master of the Rolls, to whose influence the change of system is greatly due, has already brought the above Act into as full operation as circumstances have allowed. The old custodyship of most of the offices has been superseded, and the offices are constituted branches of one central depository, the Public Record Office, which, until a proper building is ready, is at the Rolls House in Chancery Lane. The arrangement and repair, as well as the making of inventories of records, have been generally begun in most of the offices.

Preparations are also making for a uniform system of calendaring, a gigantic work which a century will hardly see completed. To select what is useful from the judgments of a single court, the Common Pleas for instance, at least 1200 miles of parchment nine inches wide must be patiently read through; and yet without the performance of this labour these records can scarcely be consulted.

The principal changes which have been made for the better accommodation of the public may be seen in the following table:—

System before July, 1840.

Office.	Hours of Attendance.	Charges for			Present System.
		Search.	Inspection of Record.	Copy of Record.	
Tower	10 till 3	10s.	6s. 8d.	1s. per folio	<i>Search in all Indexes, Calendars, &c., 1s. Inspection of a Record 1s. Copies 6d. per folio. The public may make extracts or copies in pencil, without fee, or otherwise as a favour.</i>
Rolls Chapel	10 till 3	1s. a year ea. name }	2s. 6d. } ea. Roll }	5s. 6d. a sheet }	
Chapter House	10 till 1	8s. 4d.		1s. per folio	
Carlton Ride	10 till 4	3d. a term			
(Common Pleas)	In term-time only	2s. 6d. in Index		6d. per folio	
3, Whitehall Yard, Common Pleas	No attendance				
Exch. of Pleas	No attendance	3d. a term		6d. per folio	
King's Bench (Rolls House)	No attendance	2s. 6d. in Index			

The best work of general reference as to the subjects to which the public records relate is the 'Report of the Select Committee in 1860.'

RECRUITING is the act of raising men for the military or naval service. As to the military service, recruiting is done by officers appointed for the purpose, who engage men by bounties to enter as private soldiers into particular regiments. The officers, commissioned and non-commissioned, while so employed, are said to be on the recruiting service; but the actual engaging of men as recruits is called enlistment. The laws relating to this subject have been already noticed. [ENLISTMENT.]

Formerly private persons were allowed to enlist men for the army in any way that they might think best; but now, by a clause in the Mutiny Act, any person advertising or opening an office for recruits without authority in writing from the adjutant-general or the directors of the East-India Company is liable to the penalty of twenty pounds.

In order to produce uniformity in the system of recruiting, and to ensure the employment of legal means only in ob-

taining men, the supreme control of this branch of the military service was vested in the adjutant-general of the army, and both Great Britain and Ireland were divided into several recruiting districts. To each of these were appointed an inspecting field-officer; an adjutant, whose duty it is to ascertain, in respect of stature and bodily strength, the fitness of any recruit for the service; a paymaster; and a surgeon, the latter of whom is to report concerning the health of the recruit. Under the inspecting field-officer there are several regimental officers, who are stationed in the principal towns of the different recruiting districts in order to superintend the non-commissioned officers appointed to receive the applications of the persons who may be desirous of entering the service.

In order to procure recruits, a sergeant or other non-commissioned officer mixes in country places, with the peasantry at their times of recreation; and, in towns, with artisans who happen to be unemployed, or who are dissatisfied with their condition; and, by address in representing whatever may seem agreeable in the life of a soldier, or by the allurements of

y, occasionally induces each person to enter the service.

reports concerning the fitness of an individual for military service are finally settled by approval or the inspecting officer of the district, except when cases of the headquarters from or where the recruit is enlisted is so that it would be more convenient to a letter in the depth of the regiments which he is to belong: in that or officer recommending at the especially authorized to action

are employed on the recruiting are not allowed to interfere with others in the performance of their particularly, no one is permitted any means in order to obtain for a party a man who has already been by which he may become an a member.

FOR, RECTORY, [RECTOR,

USANTS are persons who refuse to attend divine service on a and holidays, according to the of the established church.

ere were four classes of offenders the statutes against recusancy:— distinguished themselves from the service of the church from indifference, or dissent, were termed *recusants*—after conviction are styled "*recusants convict*," persons who professed the Roman religion were called "*Papish*" and those who had been convicted in a court of law of being Papish were called "*Papish recusants*."

the *recusants*, in addition to the penalties enacted against recusants disabled from taking lands, by descent or by purchase, after a years of age, until they reformed their errors. They were bound age of twenty-one to register the which they had already acquired, or bound also to register all future them and with relating to them, and are incapable of present-day education, and of making a of the right of presenting at any of the churches. They could

not keep or teach any school, on pain of perpetual imprisonment. For the offence of saying mass, the Papish recusant forfeited *per mark*, or 15*l.* 6*s.* 8*d.* For the offence of wilfully leaving mass, he forfeited 100 marks (*10*l.* 10*s.* 4*d.**), and was in each case subjected to a year's imprisonment.

Papish recusants convict incurred additional disabilities, penalties, and forfeitures. They were considered as persons excommunicated: they could not hold any public office or employment; they were not allowed to keep arms in their houses; they were prohibited from coming within ten miles of London, under the penalty of 100*l.*; they could bring no action at law or suit in equity; they were not permitted to come to court, under pain of 100*l.*, or to travel above five miles from home except by licence, upon pain of forfeiting all their goods. Severe penalties were imposed in respect of the marriage or burial of the Papish recusant convict, or the baptism of his child, if the ceremony was performed by any other than by a minister of the Church of England. Such a recusant, if a married woman, forfeited two-thirds of her *dower* or *jointure*, was disabled from being executor or administrator of her husband, and from having any part of his goods, and she might be kept in prison, unless her husband redeemed her at the rate of 10*l.* per month, or by the profits of the third part of all his lands. The present state of the law as to recusants is given under *LAW, CRIMINAL*, p. 217.

REDEMPTION, EQUITY OF, [MORTGAGE.]

REKKE. [REKKE.]

REFORMATION, HOUSES OF, [TRANSCRYPTION.]

REGALIA, the insignia of royalty. This term is more especially used for the several parts of the apparatus of a coronation. In England, the regalia properly so called are the crown, the sceptre royal, the verge, or rod with the dove, St. Edward's staff, the orb or round, the sword of mercy, called *Curtana*, the two swords of spiritual and temporal justice, the ring of alliance with the kingdom, the sceptre, or franchise, the spear of charity, and sundry royal vestments. The regalia

here enumerated, all but the vestments, are preserved in the Jewel-Office in the Tower of London. Before the Reformation in the time of Henry VIII. they were constantly kept by the religious of the abbey of Westminster; and are still presented before the king on the morning of the coronation by the dean and prebendaries of that church.

REGENT, REGENCY. These words, like *rex*, contain the same element as *rego*, "to rule," *regens*, "ruling;" and denote the person who exercises the power of a king without being king, and the office of such a person, or the period of time during which he possesses the power. Wherever there has been an hereditary kingly office, it has been found necessary sometimes to appoint a regent. The cases are chiefly those of (1) the crown devolving on a minor too young to execute any of the duties belonging to it; (2) mental incapacity of the person in whom the kingly office is vested; (3) temporary illness, where there is a prospect of the long continuance of the disease, and of incapacity in consequence; (4) absence from the realm. But in the first case the regent has usually been called in England by the name of Protector: the latest instance was the minority of Edward VI., when his uncle, the Duke of Somerset, was the Protector.

In the earlier periods of English history we have several instances of protectors during minorities, and some of regencies during the temporary absence of the king. The occasional absences of George I. and George II. on visits to their continental dominions rendered the appointment of regents a matter of convenience, if not of necessity. Sometimes the power was put, so to speak, in commission, being held by several persons jointly; but Queen Caroline sometimes discharged the functions of regent during the absence of George II. [**LORDS JUSTICES.**]

This part of the English constitution was, however, so imperfectly defined, that when George III. was incapacitated for discharging the functions of royalty by becoming insane, a question arose, on which the chief constitutional and politi-

cal authorities of the time were divided in their judgment. The question this—whether the heir apparent, of full age, and the king's eldest son not become of right regent. The party of the time, led by Mr. Fox, contended that he did. On the other it was maintained that it lay with parliament to nominate the person should be regent. No regent was that time appointed, because the king recovered. When the king was at a time incapacitated, all parties agreed conferring the title and office of regent the Prince of Wales, then heir apparent. But it was done by parliament, with certain restrictions upon him during the first year; but in the event (which did happen) of the continued incapacity of the king, he was to enter into the possession of all the powers of king if the king were dead; using, however, only the name of regent, not king.

The time when the Prince of Wales held the office of regent is the period in English history which will be hereafter by the expression "the regency," just as "the regency" in French history denotes the period of the minority of Louis the Fifteenth when the Duke of Orleans was regent. It was during the English regency the power of Napoleon was broken, and peace was restored to Europe.

REGIMENT, a body of soldiers, whether infantry or cavalry, of which the second subdivision of an army, or union of two or more regiments, constitutes a brigade, and more brigades make up a grand division or corps d'armée. A regiment is commanded by a colonel, a lieutenant colonel, and a major, whose ranks are graduated so as to correspond to those of the general officers who command the army or division; and a regiment is divided into two or three battalions, each of these has, when complete, its own lieutenant colonel and major.

REGISTER, REGISTRAR, REGISTRY. The mere possession of a document is not sufficient evidence of its authenticity, to it, except in those cases where it has been shown that it has been held by

usually for such a period as to under the operation of the Statute all claims from any . In tracing the title to land, or or mortgage requires to be established by the production of instruments under which the title derived; and the usual period for such title is required to be the last sixty years. Now exist are several register counties, or or mortgage has no means of showing that some of the deeds

to show the title may not be or accidentally withheld: for . B. may have acquired a title of conveyance, or under a may have mortgaged or otherwise the estate, with an agreement should remain in possession of payment, and may concealment which effects this charge; or, and notwithstanding the loss of such charge, may after the purchase-money lose his position of a charge prior to in point of time. And he has means of guarding himself risk. If, however, there were he compelled the registry of all relating to the title in lands, and purchasers from the operation, such as were not registered, could be removed; and with in searching such registry a would be certain that he was not against all adverse claims, a title was secure.

and Property Commissioners in their Second Report to the a general register of deeds, unanimously recommend the of a General Public Register of England and Wales of all instruments affecting land, in order to titles against the loss or or the fraudulent suppression of non-production of instruments titles by rendering in needless the assignment of terms; to protect them from the effects of constructive notice; and conveyances shorter and in.

tain extent such registers

have been already established in England. By the 27 Henry VIII. c. 16, it is enacted that all bargains and sales of land shall be enrolled. The 2 & 3 Anne, c. 4 (amended by 5 Anne, c. 16) directs that a memorial of all deeds, conveyances, and wills concerning any lands in the West Riding of Yorkshire may, at the election of the parties, be registered; and that any conveyance or will affecting the same lands shall be deemed void against a subsequent conveyance unless a memorial shall be registered. The 6 Anne, c. 35, recites that "lands in the East Riding of York, and in the town and county of the town of Kingston-upon-Hull, are generally freehold, which may be so secretly transferred or conveyed from one person to another, that such as are ill-disposed have it in their power to commit frauds, and frequently do so, by means whereof several persons (who, through many years' industry in their trades and employments, and by great frugality, have been enabled to purchase lands, or to lend moneys on land security) have been undone in their purchases and mortgages by prior and secret conveyances and fraudulent incumbrances; and not only themselves, but their whole families thereby utterly ruined;" and then the Act establishes a register of the memorials of deeds and wills in the East Riding of Yorkshire. The 7 Anne, c. 20, establishes such a register for Middlesex; and the 8 George II. c. 6, establishes one for the North Riding of Yorkshire, and provides that deeds, wills, and judgments affecting land may be registered at length, instead of the registration of mere memorials of them. In the Bedford Level there is a registration of all deeds affecting land there. These registers, owing to the insufficiency of their indexes, and to some other defects, do not answer all the purposes which might be expected from them, and in many respects the arrangements respecting them are ruinous and expensive; nevertheless (as the Commissioners remark) no one has proposed to abolish them. A registration of wills of personality has long been established in the ecclesiastical courts. The Act for Abolishing Fines and Recoveries

(3 & 4 Wm. IV. c. 74) substitutes for them a deed which is enrolled in the Court of Chancery. In Ireland, Scotland, in the Colonies, in most of the United States, in Sweden, France, and Italy, and in many of the German States, registers are established. Nor is it found that the disclosures which a register makes of the state of landholders' property produce inconvenience, nor are such disclosures inseparable from all systems of registration. It is obviously for the public benefit that the apparent extent of a person's landed property should not induce men to give him a credit to which the actual amount of that property does not entitle him.

The commissioners propose to register every document transferring any estate in land or creating a charge upon it, except such as relate to copyholds, and leases for not more than twenty-one years, accompanied by possession. Thus contracts concerning land (with certain limitations), liens upon it, judgments, crown debts, decrees in equity, pending suits, and appeals, should all form matters of registration. They recommend that all deeds should be registered at length; indeed, that the original deeds should be deposited at the Registry, and that (unless in special circumstances) office-copies of them shall be admitted as evidence. They propose that the register should not be classified according to the names of individuals, but that to the registered deed relating to an estate a symbol shall be attached indicative of that estate, under which symbol all subsequent documents affecting it will be entered. The system admits of opening a fresh series of entries, or, in other words, commencing a new title for any portion of the estate which may be separately conveyed, references being made from each to the other. And thus again many separate estates might be united under one symbol. Indexes should be prepared both of the symbols and of persons: and to facilitate reference, England and Wales should be divided into districts, usually corresponding in limits with the counties. Separate indexes should be made to wills, judgments, &c.

It is the opinion of the commissioners that if a register is established, it ought to be taken as sufficient notice of the docu-

ments registered; and that, on the other hand, default of registration ought to be remedied by any proof even of notice. With this view they recommend that persons should have liberty to register contracts, to enter caveats, to suspend the interval between the execution of a deed and its registration, and to inhibit which shall prevent owners of estates from entering them from dealing with estates pending such inhibition. A bill founded on this report was brought before Parliament (1846), but after a report of the Committee of the House of Commons was dropped.

The Act 1 & 2 Victoria, c. 110 (relating to the arrest on mesne process, except in certain cases) provides (§ 19) that the judgment of the superior courts or of the courts of equity shall affect land unless a memorandum of such judgment &c., shall be registered with the master of the Court of Common Pleas, who shall enter it under the name of the person whose estate is to be affected. The 2 & 3 Vict. c. 11, enacts that these registered judgments shall be valid for a longer space than five years, but it provides that the entry may be renewed; it also enacts that a pending suit (lis pendens) shall affect the purchaser or mortgagee with the same force as if the judgment were entered by the same officer, under the name of the person whose estate is affected, and the entry must be renewed every five years; and, thirdly, the Act enacts that crown debtors to be registered shall be registered in the same office, and provides means for maintaining and recording their discharges from their liabilities to the Crown, but the Act does not require renewal every five years of the entry in this case.

(*Second Report of Real Property Commissioners; and the Works of the Commissioners; cited; Tyrrell's Suggestions for the Improvement of Real Property.*)

REGISTRATION. The registration of documents in Scotland is a very important system intimately connected with the titles of real or heritable property, and with the execution of wills. It is thus divided into two distinct parts, which may be considered

de.—Registration for Preservation, Registration for Execution, Registration for Preservation, in its plain form, is merely the preserving of a certified transcript of any deed in a register, that thus an authentic copy may be had, recourse to in case the original should be lost. Besides the register, satisfactory records of particular deeds there are books attached to the civil courts of civil jurisdiction, in which parties may for their own convenience register such documents as do not come by any special obligatory law to be recorded. It is a general rule that even from any such records may be taken in the place of the originals when they are not forthcoming, but that a Plaintiff to found on an extract if he is the original deed in his possession must produce it. In the case of wills, however, and other deeds, if he, as will be seen below, it is not the deed itself, but its registration, that is the completed title, an extract from the register is the proper document to be produced. There is a certain class of actions, however, to meet which original must be produced if it be able. These are called Actions of Reclamation. Such an action is against the party favoured by the deed, by some other party, and its effect is annulling the deed on some ground. As a matter of form, in bringing such an action, the pursuer along with whatever other grounds of action he may have, that the deed is void, and he desires the original to be produced, that it may be judicially examined. The rule for production of the original is subject to modifications, the ground of the action is examined of anything peculiar to the deed or document; and if the original be without being intentionally defective, the inquiry must proceed on the facts and the other circumstances that surround it. It is usual to speak of registration for preservation, as being a publication; and in this sense, a deed is of such a character that when it is effectual in the grantor's hands it must have been delivered to the grantor, such registration is

in the general case equivalent to the delivery. It will operate in this respect in adjusting questions of competing right, as where a father makes over to one child the property that, in case of his dying intestate, would go to another, and registers the deed. It is questioned, however, if the mere registration would be in all cases that complete transference of property which is necessary to bar the claims of creditors under the statutes against alienations to their prejudice by insolvents. The registration of ordinary documents for preservation was sanctioned by the Act 1696, c. 4, which generally extends to registration "in any authentic public register that is competent." Besides the central register attached to the supreme court, there are others connected with the Sheriff and Corporation Courts, but it does not appear to be distinctly settled what may be, with reference to various descriptions of documents in each case, a "competent" register.

By far the most remarkable of the registers for preservation, is that of the "Sales and Reversions," the former word expressing the Act by which an estate is created or transferred in heritable (i. e. real) property, the latter the extinction of the extinction of a burden, i. e. of the devolution of a temporary estate on the person entitled to the remainder. This system has been gradually formed. In its present state its main operative principle is, that when a title to land appears on the register, no latent title derived from the same authority can compete with it, and that registered titles rank according to their priority, so that if A first sell his property to B and execute the proper conveyance, and subsequently sell the same property to C, if C get his title first recorded it cannot be questioned by B, who has only his pecuniary recourse against A. In pursuance of this system, in transactions regarding land, the public records are relied on as affording the means of ascertaining the character and title, and after they have searched for the period of prescription, or examined over a period of forty years, (Prescription) parties can trust that there are no latent rights, and may safely deal with the person who produces

to dispose of any right connected with it. The origin of this system may be traced back to the commencement of the sixteenth century, when the notaries were required to record their proceedings in their protocols, and the other officers connected with the feudal transference of land were bound to make returns of their official acts. In 1599 an Act was passed in which an effort was made to produce regularity in these registers, by penalties. It was by the Act 1617, c. 16, that the system was founded on its right principle. The preamble of that statute bears "considering the great hurt sustained by his Majesty's lieges by the fraudulent dealing of parties who having annulled [alienated] their lands, and received great summes of money therefore, yet by their unjust concealing of some private right formerly made by them, render the subsequent alienation done for greatsummes of money altogether unprofitable; which cannot be avoided unless the said private rights be made public and patent to her Majesty's lieges." The Act then appoints the sasines, reversions, &c., to be registered within three-score days after execution, otherwise they are "to make no faith in judgment, by way of action or exception, in prejudice of a third party, who hath acquired a perfect and lawful right to the said lands and heritages: Bot prejudice alwayes to them to use the said writs against the party maker thereof, his heirs, and successors." By the other clauses of the Act the superintendence of the system is given to the Clerk-Register, and the country is divided into Registration Districts. There is one defective provision in this Act, which is still in force. Parties are allowed to register their titles either in the particular register of their district or in the general register at Edinburgh. It is unusual to adopt the latter alternative, and when it is followed, it is generally for the purpose of concealing instead of publishing the transaction. There was another material defect in the old Act. A person might have his title immediately registered, but was liable to have it superseded by any other person able to register a title on a warrant previously obtained. This was remedied by the Act

1693, c. 13, which gave the registered titles priority not according to the date of their execution, but to that of registration. To prevent injustice by accumulation of unregistered deeds at the office, a minute-book was, by a temporary Act, appointed to be kept in which the keeper enters an outline of each document as it is presented to the office. By the present practice, when a sasine or other writing belonging to this register is presented to the keeper, he marks the minute-book the day and hour of presentation. This is indorsed on the deed itself, and marks the date of registration. When the deed is engrossed in full length in the register, a certificate to that effect is indorsed on the deed, mentioning the pages of the register in which the deed is to be found, and the deed is then returned. Registration volumes, or minute-books accompanying them, are issued from time to time issued from the General Register-house to the district registrars, so systematically marked and certified, as to prevent them from being tampered with without either interpolation or mutilation being easily perceptible. When a volume is finished, it is returned with the corresponding minute-book to the General Register-house. The keeper of the District Register retains a copy of the minute-book for general reference. The real titles of all heritable property in Scotland are preserved in a seriatim and indexed collection, in the General Register-house at Edinburgh. When property is offered for sale or mortgage, a "search" is generally made in the titles office, which forms part of the titles office for inspection to the parties treating with it. This is a certificate by the principal officer, describing all registered documents regarding that particular piece of land which have been recorded during forty years. The documents that require to be registered have lately been much simplified and abbreviated by the act 8 & 9 Vict. c. 35. It has to be kept in view that the execution of a real title which may be registered within the sixty days only gives a preferable title. It is not necessary to create a title, and if the receiver of conveyance have an absolute reliance

tegrity of the grantor and all from that person may have derived his he may defer completing and registering it, and may encounter the risk of another person obtaining a title sitting on the register before him. simplification of the documents to deterred tends to lessen the temptation by their completion and registration. remarkable that the enlightened mind Cromwell appears to have comprehended the utility of this system, and that he made an effort to introduce it into Eng-

We are told by Ludlow (Memoirs, 436), "In the meantime the reaction of the law went on but slowly, and the interest of the lawyers to save the lives, liberties, and estates of the whole nation in their own hands, at upon the debate of registering in each county, for want of which in a certain time fixed after the such sales should be void, and as registered that land should not be subject to any incumbrance, this word incumbrance was so managed by the lawyers, that it took up three months' before it could be ascertained by the parties."

Registration for Execution is another variety of the law of Scotland, though the system of warrants to the sheriff for judgment in England in some cases resembles it. The party to a deed incorporates with it a clause of registration, by which, on the deed being registered in the books of a court competent to put the deed in force, the sheriff of the court shall be held as bound in terms of the deed, and shall may proceed against the party to extract, as if it were the decree of a court. The engagement on which such a clause may issue must be very distinctly set forth. Thus, if it be for payment of money, it must be for a sum stated in the deed, and not for the sum that may be due on an account set out of the transactions to which the deed refers. This method of execution was by statute (1681, c. 20) made applicable to bills and promissory notes not containing any clause of registration. To entitle it to this privilege, the bill or note must be ap-

parently without flaw, must bear the appearance of due negotiation, and must have been protested. The operation of this system was much widened by the Act 1 & 2 Vict. c. 114, which extended registration for execution to the Sheriff Courts.

REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES. Parish registers were not kept in England till after the dissolution of the monasteries. The 12th article of the injunctions issued by Cromwell, Henry the Eighth's secretary, in 1538, directs that every clergyman shall, for every church, keep a book wherein he shall register weekly every marriage, christening, and death, any neglect being made penal. This measure was surmised to be preliminary to a new levy of taxes, and therefore caused much alarm. In the first year of the reign of Edward VI. (1547) ecclesiastical visitors were sent through the different dioceses in order to enforce various injunctions, and, among others, that of Cromwell with respect to parish registers. In the beginning of Elizabeth's reign this injunction was repeated, when the clergy were required to make a protestation in which, among other things, they promised to keep the register-book in a proper and regular manner. In 1694 an Act (6 & 7 Wm. III. c. 6) for a general registration of marriages, births, and deaths, was passed merely for purposes of revenue; it is entitled "An Act for granting to his Majesty certain rates and duties upon Marriages, Births, and Burials, and upon bachelors and widowers, for the term of five years, for carrying on the war against France with vigour." It is a very long Act, in which the duties are minutely set down. A supplementary Act was passed (9 Wm. III. c. 32), entitled "An Act for preventing frauds and abuses in the charging, collecting, and paying the duties upon marriages, births, burials, bachelors, and widowers. The 52 Geo. III. c. 146 (28 July, 1812), entitled "An Act for the better regulating and preserving parish and other registers of births, baptisms, marriages, and burials, in England," made some alteration in the law, chiefly with reference to having the books made of parchment or strong paper, and

to their being kept in dry and well-pointed iron chests.

The Registration Act (6 & 7 Wm. IV. c. 86: 17 Aug., 1836), entitled "An Act for registering Births, Deaths, and Marriages, in England," came into operation July 1, 1837. By the 44th section of the 6 & 7 Wm. IV. c. 85, entitled "An Act for Marriages in England," the provisions of this Registration Act are extended to the Marriage Act. [MARRIAGE, p. 322.]

The most important provisions of this Registration Act are the following:—A general registry-office is to be provided in London and Westminster (§ 2). Lord Treasurer and Lords Commissioners of his Majesty's Treasury to appoint officers, and fix salaries, to be paid out of the consolidated fund (§§ 3 and 4). Regulations for conduct of officers to be framed under direction of the Secretary of State (§ 5). Annual abstract of registers to be laid before Parliament (§ 6). The guardians of the poor of a union or parish, shall on the 1st of October, 1836, if the board is established at the passing of the Act, or, if not, within three months after its establishment, divide the union or parish into districts as directed by the registrar-general, and appoint registrars and superintendent registrar, if the clerk of the guardians will not or cannot execute that office (§ 7). Registrar offices to be provided in each union by the guardians, and to be under the care of the superintendent registrar (§ 9). Temporary registrars and superintendent registrars to be appointed, for parishes not having guardians under the Poor-law Act, by the Poor-law Commissioners; but in case of subsequent unions, previous appointments to be vacated (§§ 10 and 11). Deputy registrars may be appointed by the registrars (§ 12). All books, &c. to be transferred on removal of registrar or superintendent, under a penalty of commitment to goal (§ 15). Registrar and deputy to dwell in the district, and their names and additions to be put on their dwelling-houses (§ 16). Register books to be provided by the registrar-general, for making entries of all births, deaths, and marriages of his Majesty's subjects in England, according to the forms of

schedules (A, B, C) annexed to the Act (§ 17). Registrars authorised and required to inform themselves carefully of every birth and every death which shall happen within their district after the first day of March, 1837, and to learn and register as soon after the event as conveniently may be done, without fee or reward, save as hereinafter mentioned, in one of the said books, the particulars required to be registered according to the forms of the said schedules (A and B) respectively, touching every such birth or every such death not already registered (§ 18). After March 1, 1837, parents and occupiers may, within forty-two days after birth and five after death, give notice thereof to registrar; and owners and coroners must do so forthwith in cases of foundlings and exposed dead bodies (§ 19). Parents and occupiers, on being required by the registrar, within forty-two days, must give all the particulars required to be registered respecting birth (§ 20). Children born at sea must be registered by the captain (§ 21). After the expiration of forty-two days from the birth of the child, it can only be registered within six months on the solemn declaration of the particulars before the superintendent registrar, who is to sign the entry, and to receive 2s. 6d. and registrar 1s., extra fee; and no registration, after forty-two days, shall be made otherwise than as above, under a penalty of 50*l.* (§ 22). Births not to be registered after six months, under a penalty not exceeding 50*l.*, and no registration after that date shall be evidence (§ 23). Name given in baptism may be registered within six months after registration of birth, on production of a certificate by the minister (§ 24). Some person present at death, or occupier of house, required to give particulars of death, on application by registrar, within eight days; registrar to make entry of finding of jury upon coroner's inquests (§ 25). Registry of persons dying at sea, containing particulars, to be kept by the captain (§ 26). Registrar to give certificate of death to undertaker, who shall deliver the same to the minister or officiating person, and whom such certificate is de-

the minister must give notice to the registrar; but the coroner may order to be buried, and give certificate; and if any dead body shall be without certificate of registry or test, and no notice given to the registrar within seven days, the party is liable to a fine of 10*l*. (§ 27). Every register is signed by the informant (§ 28). Returns to make out accounts quarterly, to be verified by the superintendent, and are to be paid by the informant, as directed (§ 29). Marriage registers to be provided by the registrar-general for ministers (§ 30). Marriage registers to be kept in duplicate, showing the several particulars of birth; and every entry shall be signed by the clergyman, or the registrar, or by the secretary of Quakers and by persons married, and by witnesses (§ 31). Certified copies of registers of births and deaths to be sent to the registrar-general, and the register-books, when to the superintendent-registrar. Duplicates and certified copies of marriages to be sent to the superintendent-registrar (§ 32). Superintendent-registrars to send certified copies of registers to the general registrar (§ 33). Searches may be made and fees given by the persons keeping registers, on payment of the fees prescribed (§ 34). Indexes to be made at the superintendent-registrar's office, and allowed, and certified copies (§ 35). Indexes to be kept at the registrar office, searches allowed, and certified copies given (§ 36). Certificates given at general registrar to be sealed, and shall then be without further proof (§ 37). Any person who gives false information is liable to a fine of 5*l*. Penalty for not registering births, deaths, and marriages for being or injuring the registrar not exceeding 50*l*. Penalty for forging or falsifying register-books, or therein, or giving false certificates, is felony (§ 43). Accidental errors are corrected, within one month, in the presence of the parties (§ 44). Of recovering penalties and of

making appeals are provided for by §§ 45 and 46. Registers of baptism and burials may be kept as heretofore (§ 49). Registrar-general to furnish notices to guardians of unions, &c. specifying acts required to be done by parties registering, and which are to be published in conspicuous places of the unions or parishes (§ 50).

Another Act was passed (1 Viet. c. 22—June 30, 1837), entitled "An Act to explain and amend two Acts passed in the last session of Parliament, for Marriages, and for registering Births, Deaths, and Marriages, in England." This Act consists chiefly of arrangements necessary to extend and improve the provisions of the former Act, and its clauses are not of sufficient interest to the public to require any abstract to be given of them.

Previous to the Registration Act coming into operation it was necessary to divide the country into districts of convenient size for equalizing the labours of the registrars by contracting the area where the population was dense and extending it where the population was thin. The Registrar-general issued a circular letter in September, 1836, to the boards of guardians throughout the country, on whom devolved the duty of forming each poor-law union into registration districts, and as the unions differed much from each other in population, ranging from 2000 to 80,000, the registrar-general left the arrangement to the guardians, simply referring them to certain principles for their guidance. Parishes and townships not under the Poor-law Commissioners were formed into temporary districts, or, where more convenient, were annexed to a district already comprised in a poor-law union. To each district a registrar of births and deaths is appointed, and also a registrar of marriages; and in each union there is a superintendent registrar. The registrar of births and deaths is appointed by the guardians, and is always a resident in the district in which he acts. The registrar of marriages is appointed by the superintendent registrar, subject to the approval of the guardians.

The total number of registrars of births and deaths at the end of September

ber, 1838, was 2193, of whom 1021 were officers in poor-law unions. At the end of December, 1838, the number of superintendent registrars was 618, of whom 56 were superintendent registrars of temporary districts; at the same period the number of registrars of marriages was 817, of whom 419 were also registrars of births and deaths. In the first year, under the new Act, there were registered in England and Wales—

Births 399,712

Deaths 335,956

Marriages 111,814

Mr. Finlaison, in an estimate of the number of births, deaths, and marriages, which might require to be registered in the first year, calculated the number of births at 550,085, of deaths at 335,968, and of marriages at 114,947. The approximation as to deaths is remarkable, and not less so the deficiency in the births and in some degree in the marriages. The imperfection in the registration of births, which seems to have arisen partly from the opposition of interested persons, partly from the erroneous notions of the ignorant, and partly from mere negligence, has since been in some degree remedied, but is still imperfect.

The registrar-general, in his 6th Report, dated Aug. 10, 1844, states that four inspectors had been appointed to visit every district into which England has been divided, in order to examine into the mode in which the registrars perform their duties. These inspectors, among other important directions given to them, are required to see "that the places of birth or death are accurately recorded; that the ages and professions of those who die are duly registered; that exertions are used to impress upon persons giving information of deaths the importance of producing a certificate of cause of death, in the hand-writing of the medical men who attended the deceased in their last illness," &c.

By the end of 1839 about 350 new register-offices had been built, and the use of temporary offices had been sanctioned in many places. The ordnance-office supplied iron boxes for holding the register books of each district. By the

end of September, 1838, register books of births and deaths, and forms for certified copies thereof, had been provided by the registrar-general for 2193 registrars of births and deaths; and marriage register books, and forms for certified copies had been supplied to 11,694 clergymen of the established church, to 817 registrars of marriages, to 90 registering officers of the Society of Friends, and to 36 secretaries of Jewish synagogues. They are each required to transmit certified copies on paper having a peculiar water-mark as a safeguard against the substitution of false entries, every three months, to the superintendent registrar of each district, who transmits, once a quarter, to the registrar-general the certified copies of all the births, deaths, and marriages, which have occurred within the district during the preceding three months. These certified copies, having been deposited in the register-office in London, are there examined and arranged; and alphabetical indexes are then formed and abstracts of them are compiled. In a few years millions of entries will have been made, and yet, for legal or other purposes, it will be as easy to find out the name of any individual from among so great a number as it is to find out a word in a dictionary or a cyclopædia.

The registration for 1839 was

Births 480,540

Deaths 331,607

Marriages 121,083

The improvement in the registration of births, as compared with that for 1838, is sufficiently obvious.

The registration for 1839-40 and 1840-41 is as follows:—

	1839-40.	1840-41.
Births	501,589	504,543
Deaths	350,101	355,622
Marriages	124,329	122,482

The number of births not registered still amounts to some thousands annually, and the registrar-general is of opinion that "the registration of births will not be complete until it is enacted by law that the father or mother, or some other qualified informant, shall give notice, within a fixed period, of a birth having taken place."

A parliamentary paper gives the sum-

marriages, births, and deaths, from 1839, 1840, 1841, and 1842, as

1839.	1840.	1841.	1842.
118,768	109,488	108,408	117,885
299,274	302,308	319,318	317,730
338,270	344,354	345,887	340,252

for details relating to registers—marriages in England, see *Man-*

STERY OF SWITZER. [Swiss.]

RELEASE. [Fronzese release.]

RELEASE. "Releasees are in diversis, viz.: releasees of all the right and title in lands or tenements; releasees of actions personal and real, &c. things." (*Lit.* § 444.)

Another kind of release may be used as a species of conveyance, instrument of release must be a *Release* operative words of release or, *release*, *remission*, and for ever (an abbreviation or corruption of *remission*). According to (*§ 508*), a release to a man of title is the best release that can be, "and shall ensure most to his use," but Coke remarks that "it is a word of still more extent." The parties to a release are the releasor and the releasee: the releasor is he who quires or remissions to his use; the releasee is he who gives what the other gives up, cannot acquire anything by the releasee he has some estate in or the thing which is the object of release.

Releasees are either of an estate in land, right to land, or they are real things personal. Releasees of real rights to land form a part of the acquisition of real property.

But a Release of an estate in land has no intended effect, there is a release of estate between the releasor and the releasee; that is, the estate released and releasee must have been acquired by the same conveyance or the one estate must have been immediately out of the other, and the release operates either by enlarging the estate of the re-

leasee, or by way of passing to him the estate of the releasee.

A Release, not considered as an instrument of conveyance, is the giving up or discharging of a right of action or suit which one man has against another. This release may be either by act of law or by deed.

If a creditor makes his debtor his executor or one of his executors, the debt is legally extinguished as soon as the creditor dies, though there can be no legal evidence of this extinguishment until the executor has obtained probate of the will. The ground of this legal conclusion is, the union of creditor and debtor in the person of the executor, who would be a necessary party to an action at law against himself. But in equity as far as the debtor from being released, that the debtor executor is considered to have received the debt, and to have it as assets in his hands. Accordingly in a suit in equity against him, he may be ordered to pay the amount of the debt into court, upon admitting it in his answer. If a debtor appoint his creditor his executor, the creditor executor, both at law and in equity, may retain his debt out of the assets which come to his hands, provided he does not thereby prejudice creditors of a superior degree. If a woman marries her debtor or creditor, the extinguishment of the debt is a necessary consequence.

In a Release of this kind also the proper words are *remission*, *release*, and *quit claim*; but any words are sufficient for the purpose which clearly express the intention of the parties in the deed. If a man covenants with another that he will never sue him, this is legally construed to be equivalent to a release, because the same end would be ultimately effected by virtue of this covenant, as if there were an absolute release. But there are cases in which a perpetual covenant not to sue one debtor will not discharge a co-debtor. (*Hutton v. Ryce*, 5 Taunt. 289.) A covenant not to sue for a limited time cannot of course have the effect of a release.

All persons may release, who are not under some legal disability, such as infancy. A husband may release a debt

due to his wife, because he is the person entitled to receive it; but his release of a debt due to the wife extends only to such debts as are demands at the time of the release. A partner, or other co-debtor, may also release a debt due to him and his co-partners. An executor may, at law, release a due debt to him and his co-executors as such; and one of several administrators has the same power; but such releases are ineffectual in equity, unless they are made in the due discharge of the executor's duty. Though one of several co-plaintiffs may release a cause of action, a court of law will set aside the release if it is a fraudulent transaction.

A release may be set aside in equity on the ground of the fraud, a term which will include every act of commission or omission that renders the transaction unfair, such as misrepresentation or suppression of facts important to be known to the releasor. A plea of a release is no answer to a bill in equity which seeks to set aside the release on the ground of fraud, or which, anticipating a plea of the release, charges that it was fraudulently obtained, unless the fraud which is charged is put in issue in the plea, and sufficiently denied by answer. The principle of this is fully and clearly stated by Lord Redesdale, (*Roche v. Murgell*, 2 Becho. and Lef., 730.)

A release is generally so expressed as to include all demands up to the day of the date of it; but in this case the day of the date is excluded from the computation. If the release extends to all demands up to the making of the release, this will comprehend all demands up to the delivery of it.

It is usual for releases to contain very general words, which, in their literal signification may comprehend things that the releasor does not intend to release. But whenever it can be clearly shown, as for instance by a particular recital in a deed, that the general words of release were intended to be limited, such construction must be put on them. Parol evidence is not admissible for the purpose of limiting or enlarging the words of release; but, as in the case of wills, it may be admitted where a dif-

ficulty arises in applying the words of the instrument to the facts of the case, for which purpose the state of the facts at the time of the release must be ascertained by extrinsic evidence.

RELIEF, *RELEVUUM*, a burden incident to feudal tenures, being a sum of money paid to the lord on the admittance of a fresh tenant. It is a relief of that state of things in which the succession was not strictly speaking of right, but at the will of the lord, who required the payment of such an acknowledgment for the concession. It became, however, so much the custom for the lord to admit the sons or near kindred (hain, as we now say) to the inheritance of the ancestor, that a custom became established of doing so, and out of the custom grew the law of inheritance. The money, however, which had been paid for admission in the former state of things, continued to be paid when the succession of the next heir had become what is called matter of right.

Bracton gives what is probably the true etymology of the word. "*Relevus*," says he, "are so called, 'quia hereditas que jacens fuit per antecessoris decessum, relevatur in manus heredum, et propter factam relevationem.'"

REMAINDER. An estate in remainder is defined by Coke to be "a remnant of an estate in lands or tenements, expectant on a particular estate, created together with the same at one time." According to this definition, it must be an estate in lands or tenements, including incorporeal hereditaments, as rents and tithes; and it is an estate which at the time of its creation is not an estate in possession, but an estate the enjoyment of which is deferred. The estate in remainder may exist in lands or hereditaments held for an estate of inheritance or for life. It must be created at the same time with the preceding estate, and by the same instrument; but a will and a codicil are for this purpose the same instrument. A remainder may be limited by appointment, which is an execution of a power created by the instrument that creates the particular estate; for the instrument of appointment is legally considered as a part of

the original instrument. A remainder may also be created either by deed or by will; and either according to the rules of the common law, or by the operation of the Statute of Uses, which is now the more usual means.

If a man seisin in fee simple grants lands to A for years or for life, and then to B and his heirs, B has the remainder in fee, which is a present interest or estate, and he has consequently a present right to the enjoyment of the lands upon the determination of A's estate; or, in other words, he has a vested estate, which is called a vested remainder. A reversion differs from a remainder in several respects. He who grants an estate or estates out of his own estate, retains as his reversion whatever he does not grant; and upon the determination of the estate or estates which he has granted, the land reverts to him. There may be several reversions and a reversion expectant on them. If A, tenant in fee simple, limits his estate to B for years, with remainder to C for life, with remainder to D in tail, this limitation does not exhaust the estate in fee simple. By the limitation B becomes tenant in possession for years, C has a vested remainder for life, D a vested remainder in tail, and A has the reversion in fee. If the limitation by A exhaust the whole estate, as it would have done in the preceding instance if the limitation had been to C and his heirs, A has no estate left. It is a necessary consequence that if a man grants all his estate, he can grant nothing more; and therefore the grant of any estate after an estate in fee simple is void as a remainder. Indeed, the word remainder implies that what is granted as such is either a part or the whole of something which still remains of the original estate.

The estate which precedes the estate in remainder or in reversion is called the particular estate, being a particular or portion of all the estate which is limited; and the particular estate may be any estate except an estate at will and an estate in fee simple. It must therefore be either an estate for years, or for life, or in tail.

Estates for years may be granted to

commence at a future time; but by the rules of the common law, no estate of freehold can be created to commence at a future time. If therefore such an estate of freehold is granted, there must be created at the same time an estate for years, which shall continue till the time fixed for the enjoyment of the estate of freehold. If a freehold remainder expectant on an estate for years is created at common law, there must be livery of seisin to the tenant for years, for it is necessary that the freehold should pass to the grantee at the time of the grant, and the livery to the tenant for years ensures to give a seisin to him to whom the estate of freehold is granted.

A remainder cannot be granted so as not to take effect immediately on the determination of the particular estate. If there is any interval left between the particular estate and the remainder in the reversion, the remainder is absolutely void. A grant of an estate to A, and one day after the determination thereof to B, is a void remainder.

Estates in remainder are either vested or contingent. The remainder may vest at the time of the limitation, or it may vest afterwards; in either case the remainder-man acquires an estate in the land, to the enjoyment of which he is entitled upon the determination of the preceding estate. But it may happen that a vested remainder may never become an estate in possession.

A vested remainder is an estate which, by the terms of the original limitation or conveyance, is limited or conveyed unconditionally. If a remainder is not vested, it is contingent.

A contingent remainder is defined by Fearn to be "a remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate." Accordingly it is the limitation of the remainder which is conditional, and there is no remainder limited or given until the condition happens or is performed. The uncertainty of the remainder becoming an estate in possession is no part of the action of a contingent remainder; for this kind of

uncertainty may exist, as already observed, in the case of vested remainders.

Fearne has made four classes of contingent remainders, to some one of which he considers that all kinds of contingent remainders may be reduced, but he adds that "several cases which fall literally under one or other of the two last of those four descriptions, are nevertheless ranked among vested estates." The subject of contingent remainders is fully discussed in the elaborate treatise of Fearne, on *Contingent Remainders and Executory Devises*.

RENT is defined by Mr. Ricardo to be "that portion of the produce of the earth which is paid to the landlord for the use of the indestructible powers of the soil. It is often, however (he remarks), confounded with the interest and profit of capital, and in popular language the term is applied to whatever is annually paid by a farmer to his landlord." Mr. Malthus (*Prin. of Pol. Econ.*) defines rent to be "that portion of the value of the whole produce which remains to the owner of the land, after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of the profits of agricultural capital, at the time being."

The chapter on rent, in the 'Wealth of Nations,' though abounding in important facts, contains no distinct enunciation of the nature and causes of rent. Dr. James Anderson in the 'Recreations in Agriculture' (vol. v. p. 401), published in 1801, is acknowledged to have propounded the theory of the origin and progressive increase of rent which is now generally recognised; but his theory excited little attention at the time; and it was not until 1815 that it was more fully and elaborately treated in two works published simultaneously: one of them was an 'Essay on the Application of Capital to Land,' by a Fellow of University College, Oxford (Mr. West, a barrister, afterwards chief-justice of Bombay); the other work was by the late Mr. Malthus, and was entitled 'An Inquiry into the Nature and Progress of Rent.' The late Mr. Ricardo had adopted the principles of these two

works several years before they were published, but it was not until 1817 that a pamphlet by him appeared which contained his views on the subject. The publication of his 'Principles of Political Economy and Taxation' followed in the same year. Mr. Mill and Mr. MacCulloch have more fully adopted the Ricardo theory than any other writers; but Mr. Malthus has dissented from some of its principles, although his views in the main coincide with that theory; and Professor Tucker, of the university of Virginia, dissents from it still more widely than Mr. Malthus. Mr. Senior, while condemning some of Mr. Ricardo's reasonings, appears to have again propounded them under a different form.

The causes of the ordinary excess of the price of raw produce above the cost of production, as enumerated by Mr. Malthus, are:—1, That quality of the soil, by which it can be made to yield a greater quantity of the necessities of life than is required for the maintenance of the persons employed on the land. This is the foundation of rent, and the limit to its possible increase. 2, The second quality consists in that property peculiar to the necessities of life, by which, if properly distributed, they create demand in proportion to the quantity of necessities produced. Thus, the effect is to give a value to the surplus of necessities, and also to create a demand for more food than can be raised on the richest lands. 3, The comparative scarcity of fertile land; a circumstance which is necessary to separate a portion of the general surplus into the specific form of rent to a landlord. As most modern economists have adopted the main principles of the Ricardo theory, we here give an outline of it, in the words of Mr. Ricardo.

Mr. Ricardo says:—"If all land had the same properties, if it were boundless in quantity and uniform in quality, no charge could be made for its use, unless where it possessed peculiar advantages of situation. It is then because land is of different qualities with respect to its productive powers, and because, in the progress of population, land of an inferior quality, or less advantageously situated, is called into cultivation, that rent is ever

paid for the use of it. When, in the progress of society, land of the second degree of fertility is taken into cultivation, rent immediately commences on that of the first quality, and the amount of that rent will depend on the difference in the quality of these two portions of land. . .

With every step in the progress of population which shall oblige a country to have recourse to land of a worse quality to enable it to raise its supply of food, rent on all the more fertile land will rise, . . .

If good land existed in a quantity much more abundant than the production of food for an increasing population required, or if capital could be indefinitely employed without a diminished return on the old land, there could be no rise of rent; for rent invariably proceeds from the employment of an additional quantity of labour with a proportionally less return."

Rent, according to the definition which has been given, consists of a surplus which remains after the capital expended in production has been replaced with ordinary profits. This surplus, which constitutes rent, arises, as Mr. Ricardo asserts, from, and is in proportion to, the necessity for resorting to inferior soils or employing capital on the old soil with smaller returns. To use the words of Mr. Mill—"Rent is the difference between the return made to the more productive portions and that which is made to the least productive portion of capital employed upon the land." In a country containing, as every country does contain, land of various degrees of fertility, rent therefore will not be paid until the demands of an increasing population have rendered it necessary to have recourse to the inferior soils. "Thus (continues Ricardo), suppose land, Nos. 1, 2, 3, to yield, with an equal employment of capital and labour, a net produce of 100, 90, and 80 quarters of corn. In a new country, where there is an abundance of fertile land compared with the population, and where therefore it is only necessary to cultivate No. 1, the whole net produce will belong to the cultivator, and will be the profits of the stock which he advances. As soon as population had so far increased as to make it necessary to cultivate No. 2, from

which 90 quarters only can be obtained after supporting the labourers, rent would commence on No. 1; for either there must be two rates of profit on agriculture, or ten quarters, or the value of ten quarters, must be withdrawn from the produce of No. 1 for some other purpose. Whether

the proprietor of the land or any other person cultivated No. 1, these ten quarters would equally constitute rent; for the cultivator of No. 2 would get the same result with his capital, whether he cultivated No. 1, paying ten quarters for rent, or continued to cultivate No. 2, paying no rent. In the same manner it might be shown, that when No. 3 is brought into cultivation, the rent of No. 2 must be ten quarters, or the value of ten quarters, whilst the rent of No. 1 would rise to twenty quarters. . .

It often and indeed commonly happens that before Nos. 2 and 3, or the inferior lands, are cultivated, capital can be employed more productively on those lands which are already in cultivation. . . In such case, capital will be preferably employed on the old land, and will equally create a rent; for rent is always the difference between the produce obtained by the employment of two equal quantities of capital and labour. If with a capital of 1000*l.* a tenant obtain 100 quarters of wheat from his land, and by the employment of a second capital of 1000*l.* he obtain a further return of 85, his landlord would have the power, at the expiration of his lease, of obliging him to pay 15 quarters, or an equivalent value for additional rent; for there cannot be two rates of profit. If he is satisfied with a diminution of 15 quarters in the return for his second 1000*l.*, it is because no employment more profitable can be found for it. . .

In this case, as well as in the other, the capital last employed pays no rent. For the greater productive powers of the first 1000*l.*, 15 quarters is paid for rent; for the employment of the second 1000*l.*, no rent whatever is paid. If a third 1000*l.* be employed on the same land, with a return of 75 quarters, rent will then be paid for the second 1000*l.*, and will be equal to the difference between the produce of these two, or 10 quarters; and at the same time the rent

of the first 1000*l.* will rise from 15 to 25 quarters, whilst the last 1000*l.* will pay no rent whatever." (Ricardo's *Prin. of Pol. Econ.*, 3rd. ed.)

Another incident of rent, it is said, is this: that it does not form a part of the cost of production. Mr. MacCulloch has given the following explanation of this law in Note iii. of his edition of the "Wealth of Nations." "The price of raw produce," he remarks, "does not exceed the cost of production," including in that expression the ordinary profits of the producer's capital. "The aggregate price exceeds the aggregate cost of production; but this is because the cost of production is unequal. The price exceeds the lowest, but not the highest cost of production: and this highest cost, since it regulates the price of the whole, may be considered, without impropriety, as the cost of the whole, and the rent to be a peculiar privilege of favoured individuals."

The circumstances which precede or accompany the cultivation of inferior lands or the employment of additional capital on the old lands are stated to be—1, an increase of population; 2, the accumulation of capital; 3, a rise in the exchangeable value of raw produce. The two first cause a fall in profits and wages, and a rising market-price of raw produce is a consequence of more labour or more capital being required to produce it, or of a deficient supply previous to its being produced. In a new country, the whole produce is divided between the capitalists and the labourers, and so long as fertile land is in abundance and may be had for an almost nominal price, nobody will pay a rent to a landlord, and profits and wages are maintained at a high rate. But capital accumulates and wages decrease; and whenever agriculture has reached a state in which the returns of additional capital on the old lands are less than could be obtained from the inferior land, such inferior land will be cultivated, and if the profits of the capital employed on such inferior land were 20 per cent., while the old lands yielded 30 per cent., a rent would arise equivalent to the difference, or 10 per cent. This, as well as any subse-

quent rise of rents, is caused by capital being ready to be laid out on old land, but which cannot be so even without diminished returns, and this circumstance renders it more profitable to take fresh lands into cultivation, of an inferior degree of fertility.

One of Professor Tucker's objections to the Ricardo theory of rent is directed against the assumption that "the quantities of subsistence are a fixed quantity near it, instead of its admitting of gradations that a labourer may be supported by one-fifth of the soil required for subsistence;" and he refers to the Western states of the American Union, where a labourer can earn, in ten days, as much grain as he consumes in a year, and where, consequently, a very high scale of subsistence is maintained, and he contrasts it with countries in which the whole year's labour is necessary to earn subsistence for the year, although the cost of diet is comparatively low.

In the Atlantic states of the Union, compared with the Western states, the contrast is also very striking. The striking character of human subsistence, Professor Tucker contends, is the cause of rent, without either an increase or decrease in the returns to labour. The very high rents paid in Ireland be partly attributed to this cause. In the course of his objections to Ricardo's theory, Professor Tucker remarks:—"Land is a primeval machine, which but a few persons whose produce none can dispose of, and for which there being no more demanders, they must and will employ more of their labour to obtain it. Rents, having once begun, can only increase with the increase of population and the more frugal consumption which it impels individuals." MacCulloch simply regards the adoption of less costly food by the labourer as similar in its effects upon profits to an improvement in agriculture. Professor Tucker's further objections against the Ricardo theory in its ascribing "the progressive rise of raw produce and of rents to the amount of labour expended on

utilized, and not to the greater mass of all labour from the increase of population?" and in its maintaining "when raw produce rises, labour also" (p. 148). He concludes "that as in a resort to soils of inferiority, we look more distant from us, are different outlays of capital become hardly necessary either to the mass of rent, or to its progressive increase; but that it is caused solely by the law of population, together with the fact which the same soil possesses of yielding a greater number by reason of resorting to a more frugal mode of tillage" (p. 121). It should be noted, that Professor Tucker admits "successive resorts to inferior soils, steps of fresh capital on old lands, pace with the rise of raw produce, necessarily afford a measure of the law of rent, and of its different degrees according to diversities of fertility, to its distance from market, but are not the cause of its rise" (p. 121).

Indeed, whatever may be the theory of the causes and amount of money given in community, it may be easily shown that the existence of varying fertility is not a necessament to the existence of rent, the limited amount of productive is a necessary element.

Monopolies of position, such as a proximity to markets, may counterbalance the savings of inferiority; and land in desuetude, which, if it were removed, would yield no rent, under these circumstances, produces the rent that more fertile lands at a distance from the main city. Land in the neighbourhood of a city yields a high rent, and a still higher rent is paid for land in towns, but in each of these cases is regulated by the common principle there must be two rates of profit, such the case first mentioned is not; or, as in the latter examples, controlled by the limited extent of land.

objections on the importation of raw produce, by forcing the inferior soils into use, undoubtedly tend directly to raise; but no possible quantity of

imported produce could have any material effect in diminishing the total rents of the country. Importation necessarily implies the existence of high prices in the importing country: it has a tendency to equalize rather than to lower prices, as, by facilitating the exchange of manufactured goods for common food, population is increased, and an increased demand arises for other products of the soil besides bread corn. This has been the case in the territory of Genoa, where the soil, though of a sterile nature and unfit for the production of corn, yields a higher rent than the fertile corn-lands in the plains not far distant; for the cost of production being low by means of the low price of imported food, land may be cultivated for various agricultural objects, and yield a rent which, if employed in the production of grain, would scarcely repay the cost of production. In a country which possesses superior manufacturing resources and capabilities, the exchange of manufactures for common food may therefore be a cause of rent without resorting to inferior soils.

Mr. Ricardo regarded the owners of land in the same light as the possessors of a monopoly, advantageous to themselves and proportionally injurious to the mass of consumers. Mr. Malthus proposed to modify this view of their advantages, and to consider them as originating only in a "partial monopoly." The former is accused of underrating the national importance of rents, and Mr. Malthus of overrating them. Under a system of free importation of the produce of the soil, it may be correct to consider the owners of land as possessed only of a "partial monopoly;" but it is scarcely so when laws are passed which, except in seasons of high prices, prohibit the supply of provisions from foreign countries; and in this case the interests of the community do not coincide with that of the owners of land.

When rights of property are fully established, rents will exist, whether they accrue to the farmer-proprietor or are paid by the farmer-tenant to a landlord. That quality of land which terminates in rent, Mr. Malthus regards as a most important to the happiness

of mankind, and the main security against the time of the whole society being employed in procuring mere necessities. "This," he observes, "is the source of all power and enjoyment; and without which, in fact, there would be no cities, no naval and military force, no arts, no learning, none of the finer manufactures, none of the conveniences and luxuries of foreign countries, and none of that cultivated and polished society which not only elevates and dignifies individuals, but which extends its beneficial influences through the whole mass of the people."

In Mr. Malthus's *Principles of Pol. Econ.* the subject of section 7, chap. iii., is "On the causes which may mislead the landlord in letting his lands, to the injury both of himself and the country." Most of the considerations which he urges are of a practical nature, and relate to rent in agriculture. On this part of the subject the reader may refer to Grainger and Kennedy, "On the Tenancy of Land in Great Britain."

(Ricardo, Malthus, Mill, and MacCulloch's *Treatises on the Elements and Principles of Political Economy*; Professor Tucker's *Laws of Wages, Profits, and Rent Investigated*, Philadelphia, 1837; Professor Jones's *Essay on the Distribution of Wealth and on the Sources of Taxation*.)

RENT (in Law Latin, *redditus*, "a return") is a right to the periodical receipt of money or something valuable in respect of lands or tenements held by him from whom the rent is due. There are three kinds of rent—rent-service, rent-charge, and rent-sock.

There is rent-service when a tenant holds lands of his lord by fealty and certain rent, or by homage, fealty, and certain rent, or by other services and certain rent. Rent-service therefore implies tenure, and it may be due to the lord of the manor of which the lands are held, or to some other chief (that is, immediate) lord of the fee, or to the reversioner. The right of distress is an incident to rent-service in arrear, so long as it is due to the same person to whom fealty is due. In order that rent-service may now be created, the person to whom the rent is reserved must have a reversion in the

lands and tenements out of which the rent is to issue; but any reversion sufficient. Thus a person who has of twenty years may grant it to a tenant for all but one day, and this will leave a reversion, so that a rent-service reserved, with its incidents of fealty, is the right of distress. If he assigns the term, reserving a rent, but with clause of distress in the assignee cannot distrain for the rent.

Rent-service therefore which is created since the statute of Quia Emptores can only be reserved to the lessor retains a reversion, and it will be the person who is entitled to the rent. If a man seised in fee simple in lease of lands for years, reserving the rent-service is descendible to his heirs with the reversion; though all which accrue due to the lessor before death will belong to his personal representatives. A rent-service reserved of chattels real will of course belong to the personal representatives of the lessor. A rent is now most commonly reserved in leases for years, but it may be reserved on any conveyance which passes a leasehold estate; and it may be reserved in the grant of an estate in reversion, or in a grant of a lease for years to commence at a future time.

A rent-service may be separate from the reversion or seignory, by the grantor granting the rent and retaining the reversion; in this case the lands are seised of the grantor, but the rent is due to the grantee; not however as rent-service, but as rent-charge (*redditus siccus*), so that for that no distress is incident. (Litt. 218.) If the seignory or reversion is granted, the rent-service will be due to the grantor, and the grantee is entitled to receive the rent from the tenant from time to time that he gives him notice of the amount together with all rent that had accrued due since the grant, and is unpaid at the time of such notice.

Rent-service can only be reserved to the feoffor, donor, or lessor, or to his heirs, upon any feoffment, gift, or conveyance, and if rent is reserved generally, specifying the persons, it will be due to the lessor, and after his death to his heirs who are entitled to the reversion.

at the times mentioned in the lease, may not till the last minute of the month in which it is payable.

If the rent-service is in arrear, the law remedy for the recovery of distress. [DISTRESS.] By 4 Geo. 2, every landlord who by the lease has a right of re-entry for non-payment of rent, may, if a year's rent is due, and there is no distress on the premises, obtain a declaration in ejectment on his behalf without any formal re-entry or demand of rent, and a recovery of the rent is final and conclusive. The rent and all costs are paid at a calendar month after the judgment in the action of ejectment has been obtained. The action may also be brought before trial, if the tenant will pay to the lessor, or pay into court at that time in arrear, together with the costs.

By the common law the lessor may bring an action of debt for rent against the tenant for years or at will; and by the Statute of Anne (8, c. 14, § 4) there is now the same action against a lessee for the continuance of his estate, as was previously given for arrears of rent after the determination of a lease (32 Hen. VIII. c. 37). A lessee may also have an action of covenant, either by force of the instrument contained in such words as "he shall and paying" rent, or by force of a lease covenant to pay, which is implied in any lease. If the lessor dies, his interest in the term, he, his executors so far as they have not been still liable under the covenants in the lease, are entitled to the reversion. The lessee also becomes bound by such covenants as run with the land, and is consequently liable to an action of covenant. There is also the remedy by assumpsit or debt for the use of the land, which action lies only by express agreement for rent.

The rent-service may be discharged in any way. If the tenant be evicted and denied to him, he is discharged from payment of the rent; and if he purchase the lessee's interest, the rent is also discharged. The lessor may release a part of the rent-service, without releasing the whole. A rent-charge is a rent granted out of land either at common law or by the Statutes of Uses, with a power of distress for the recovery of the rent. Such rents may be created by the owner of the land who retains the property of it; and they may also be reserved on the alienation of the land. These rents differ from rent-service in not being connected with tenure, and the remedy by distress is therefore not an incident to rent-charges, but is created by the same instrument which creates the rent-charge. If no power of distress is given, the rent is a rent-secck. Rent-charge may be created either by deed or by will. Sometimes, by the terms of the grant, the grantee of a rent-charge is empowered to enter on the land and satisfy himself for all arrears out of the profits of the land. When a rent-charge is created under the Statute of Uses (§ 4, 5) with a power of distress and entry upon the land in case of arrear, the person to whom the rent-charge is given obtains the legal estate in the rent-charge, with all the remedies for its recovery, as he would by a direct grant of the rent-charge; and the same instrument (lease and release) which creates the rent-charge may also make a settlement of the lands charged with the rent. In this way in a marriage-settlement a rent-charge may be provided for the wife's jointure.

An estate in a rent-charge may be either in fee simple, in fee tail, for lives, or for years, according to the terms of the original limitation. A rent-charge of inheritance is real estate, and descendible to the heir; but a payment that is due belongs to the person representative.

A rent-secck, as already mentioned, is not, like rent-service, accompanied with a right to distrain at common law; but by the Statute 4 Geo. II. c. 28, § 5, this distinction in respect of remedy between rent-service and rent-secck, created since that statute, is abolished; and the act also applies to rent-secck created prior to the statute which had been duly paid for three years out of the last twenty years. Other rents, though they belong to one of

the three divisions above mentioned, are often distinguished by particular names: thus the real rent due from a freeholder is called a chief rent (*redditus capitalis*); the rents of freeholders and ancient copyholders of manors are sometimes called rents of assise, being *assisi*, or ascertained, and also quit rents (*quieti redditus*), because they are a quitance and discharge of all services.

A fee-farm rent is properly a perpetual rent-service reserved by the crown, or, before the statute of Quia Emptores [FEUDAL SYSTEM], by a subject, upon a grant in fee simple. The purchaser of fee-farm rents originally reserved to the crown, but sold under 22 Car. II. c. 6, has the same power of distress that the king had, and so may distrain on other land of the tenant not subject to the rent.

REPORTS (in Law) are relations of the proceedings of courts of law and equity. They contain a statement of the pleadings, the facts, the arguments of counsel, and the judgment of the court in each case reported. The object of them is to establish the law, and prevent conflicting decisions, by preserving and publishing the judgment of the court, and the grounds upon which it decided the question of law arising in the case.

The earliest reports extant are the 'Year-books.' It is said that some few exist in MS. of the reign of Edward I., and a few broken notes are to be found in Fitzherbert's Abridgment. A series of these commences, and are now printed, from the reign of Edward II. They were published annually, which explains their name, from the notes of persons, four in number, according to Lord Coke, who were paid a stipend by the crown for the purpose of committing to writing the proceedings of the courts. These early accounts of cases are very short, abrupt, and often confused, especially from the circumstance that it is frequently difficult to ascertain whether a judge or a counsel is speaking. At that time judges were dismissed at the pleasure of the crown, and after their dismissal returned to their previous position of counsel.

The Year-books continue, with occasional interruptions in their series, down to the reign of Henry VIII. The omis-

sion during the time of Richard I. been attempted to be supplied by B. who collected and arranged the case that period which had been preserved by other writers. The Year-books are written in Norman-French, altho 36 Edw. III. stat. 1, c. 15, it was that all pleadings should be in the English language, and the entries on them in Latin. The Norman-French continued to be used by some reporters even as the eighteenth century. The first which appeared in that tongue were of Levinz and Lutwyche; the former 1702; the latter, in French and Latin 1704. The Year-books of later date more continuity of style and false discussion: cases are cited, and the decision of the court is given at great length. About the end of the reign of Henry VII. it is probable that the series was withdrawn. Only five Year-books exist for the ensuing reign, and were published after it. Lord Coke serves, that there is no small difference between the cases reported in the reign of Henry VIII. and those previous. The place was shortly afterwards supplied by reports compiled and published by private individuals on their own responsibility, but subject for some time to inspection and approbation of the judges, whose testimony to the ability and fidelity of the reporter is often prefixed to the Reports. This however soon became mere form, as appears by the statement of Lord-Keeper North, who speaks singularly of the Reports in his time as passed with his favourite Year-books.

During the reign of Henry VIII. his three successors, Dyer, after chief justice of the Common Pleas, notes as a reporter. Benloe and Dyer were also reporters in these reigns. At the time of Elizabeth many eminent lawyers reported the proceedings of courts, and from the ability with which they acquitted themselves, added to the previously unsettled state of the law Reports of about this period have acquired very great authority. Anderson, Leonard, Owen, Coke, and Croft lived about this time. But the first printed accounts of cases published by a private hand are those of Edmund Plowden

(which appeared in the year or the title of 'Commentaries,' afterwards the attention of which the notes of their testator expressed, under the title of 'Reports,' but published under that title, followed, in 1601 and 1602, of Sir Edward Coke, which, excellence, have ever been by the name of 'The Reports.' In times reporters did not, as those in more modern times, confine to one court. In the sixteenth century reports of cases, in the three superior courts, of wards, &c. During the reign of Henry VIII. Lord Bacon and Sir John de Witt suggested to the king the appointment of two officers for the purpose of writing and minutes of proceedings in the courts. James accepted of the suggestion, and a copy of his ordinance of appointment, at a salary of £100 per annum, is still extant. (Hume's Hist. of Eng. v. 1, c. 147.) The ordinance never appears to have been put into effect, and reports continued to be published by private hands.

The English language was first used about the time of Elizabeth, employed in his 'Commentaries.' In his preface he thought it convenient to do so, as his conduct was not precedent. From the period of Henry VIII. to the present, reports of cases in the three superior courts, of wards, &c. The whole body of reports is very large. Every court has its reporters, who are not persons by the courts. The reporters are judges as to what they report, and their volumes often contain matters and are swelled out by unnecessary and useless matter, and are not useful. The reports of cases decided, with a view of the cases and the grounds of the decision, is certainly both useful and necessary; but the great mass of cases and the trifling matter of them have had the effect of even more on the judgment of the courts than on those of the law which have an

extensive application and are the surest foundation for a sound legal opinion.

(Coke's Reports, Preface to Part 3; Dugdale's Origines Juridicæ; Reeves's History of the English Law.)

REPRESENTATIVES. [COMMONS, HOUSE OF; PARLIAMENT.]

REPRIZE (from the French *repris*, withdrawn), means the withdrawal of a prisoner from the execution and proceeding of the law for a certain time. Every court which has power to award execution, has also power, either before or after judgment, to grant a reprieve. The consequence of a reprieve is, that the delivery or the execution of the sentence of the court is suspended. A reprieve may proceed from the mere pleasure of the crown expressed to the court, or from the discretion of the court itself. The justices of good delivery may either grant or take off a reprieve, although their session be finished, and their commission expired. A reprieve which proceeds from the discretion of the court is usually granted when, from any circumstance, doubt exists as to the propriety of carrying a sentence into execution. This doubt may be created either from the unsatisfactory character of the verdict, the suspicious nature of the evidence, the insufficiency of the indictment, or from the appearance of circumstances favourable to the prisoner. When a reprieve has been granted with a view to recommend to mercy a prisoner capitally condemned, a memorial to that effect is forwarded to the secretary of state, who recommends the prisoner to the mercy of the crown, and to a pardon, on condition of transportation or some lighter punishment. [PARDON.] Where it has been granted by reason of some doubts in point of law as to the propriety of the conviction, the execution of the sentence is suspended until the opinion of the judges has been taken upon it. The sentence is then executed or commuted in accordance with their opinion.

There are two cases in which a reprieve is always granted. One is where a woman who has been capitally convicted pleads her pregnancy in delay of execution. (LAW, CRIMINAL, p. 708.) The other is where a prisoner is young

o have become insane between judgment and the award of execution. In such case a jury must be sworn to inquire whether he really is insane. If they find that he is, a reprieve must be granted. (*Termes de la Ley*, 498; Hale, *P. C.*; 2 Hawk. *P. C.* book ii. c. 51, § 8, 9; 4 Blackstone, *Com.*)

A reprieve is granted thus:—Before leaving an assize town, a calendar containing the names, offences, and sentences of the prisoners is prepared by the clerk of the assize, and is signed by the judge. If he thinks proper to reprieve any one of them, he writes the word "reprieved" in the margin of the calendar, opposite to the name of the prisoner, as follows:—

"Reprieved.	A. B. for	To be
	the murder	
	of C. D.	

If he leaves A. B. for execution, and subsequently reprieves him, he writes to the under-sheriff and the gaoler to say so, and such letter from the judge stays execution.

If the reprieve is sent by the secretary of state, it is under the sign manual of the king.

REPUBLIC is derived immediately from the French *république*, and ultimately from the Latin *res publica*. The Latin expression *res publica* is defined, by Facciolati, to be "*res communis et publica civium una viventium*," and corresponds very closely with the English word *commonwealth*, as used in its largest acceptation for a political society. The Latin word *res publica* might be applied to a community under a substantially monarchical government; thus Augustus is said, in a passage of Capito, a Roman lawyer, to have governed the *res publica* (Gellius, xiii. 12); the word, however, was more applicable to a society having a popular government than to a society having a monarchical government; thus Cicero denies that the name of *res publica* can be properly given to a community which is grievously oppressed by the rule of a single man: "*Ergo illam rem populi, id est rem publicam, quis diceret tum, quum crudelitate unius oppressi essent universi; neque esset unum vinculum juris, nec consensus ac societas coetus,*

quod est populus." (*De Rep.*, ii. 31.)

So Haemon, in the '*Antigone*' of Sophocles (v. 733), says that a state which is under the power of one man does not deserve the name of a state.

A *republic*, according to the modern usage of the word, signifies a political community which is not under monarchical government, or, in other words, a political community in which one person does not possess the entire sovereign power. Dr. Johnson, in his dictionary, defines a republic to be "a state in which the power is lodged in more than one." Since a republic is a political community in which several persons share the sovereign power, it comprehends the two classes of aristocracies and democracies, the differences between which are explained under ARISTOCRACY and DEMOCRACY.

The word *republic* is sometimes understood to be equivalent to *democracy*, and the word *republican* is considered as equivalent to *democrat*; but this restricted sense of the words appears to be inaccurate; for aristocratic communities, such as Sparta, Rome in early times, and Venice, have always been called republics.

It has been shown in MONARCHY that the governments usually styled "limited monarchies" are properly aristocracies presided over by a king; and consequently ought to be referred to the class of republics, and not to that of monarchies, in which they are commonly placed. We observe, however, that the German writers, who know from their personal experience the character of monarchies strictly so called, sometimes correctly give the name of republican to the government of England since 1688, and to the government of France since 1813.

A vast deal of error and confusion of thought (leading to important practical consequences) has arisen from the equivocal and indistinct usage of the words *monarchy* and *republic*.

REQUEST, COURTS OF (sometimes called *Courts of Conscience*), are local tribunals, founded by Act of Parliament to facilitate the recovery of small debts from any inhabitant or trader in the district defined by the Act.

all the Acts are made upon the same, the most easy method of explaining functions of these courts will be to show the general provisions of those

board of commissioners is appointed, in corporate towns consisting of or two aldermen, with a certain number of householders as assessors. To the board is given the power of summoning a debtor, upon the complaint of the creditor, of taking the evidence of the debtor and his witnesses upon oath, of valuing on the amount due, and of issuing a summons or order to the debtor to pay that amount, either in one sum or instalments. The board has usually power of distress on goods, or of imprisonment during a limited time, if the debt for payment is not obeyed. In some cases the jurisdiction is confined to cases where both parties are inhabitants, the same restriction may be found in some of the older Acts; but usually it is so that the debtor should be an inhabitant, or should be "seeking his livelihood" within the jurisdiction.

As to the sum to which the jurisdiction of the court extends it is usually 20*l.*, often 10*l.*, and the debt may arise either from a simple contract, a balance of account, or as a compromise of a larger debt; there is usually a proviso in the Acts that there is usually a proviso in the Acts that a larger debt shall not be split into fragments to bring it within the jurisdiction of the court, although the creditor may reduce a larger demand to a sum as the court can award, provided he is satisfied with the smaller sum in discharge of his whole debt.

The Acts usually provide that if a party brings the jurisdiction is sued in one of the superior courts, and the plaintiff recovers from him only the sum which the court could have awarded, the plaintiff shall pay full costs to the defendant. The Acts also reserve to a landlord the right to distrain for rent, and to exclude the courts from interfering in matters touching the right to land or occupation of it, or in matters belonging to ecclesiastical courts, or to tithes; and, too, gambling debts are excluded. Sometimes tavern debts incurred on the premises. The courts have jurisdiction

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over persons under age, and can usually grant summons for wages due to minors. Attorneys are not exempted from the jurisdiction of the court, but they are usually prohibited from practising in it, and they are not liable to payment of costs for suing in superior courts. Most of the Acts contain a clause prohibiting the removal of the proceedings to superior courts.

The 8 & 9 Vict. c. 127, § 2, enables her majesty, with the advice of her privy council, among other things to extend the jurisdiction of any court of requests to 20*l.*, if such court has a judge who is either a barrister at law, or special pleader, or an attorney of one of the superior courts of common law at Westminster, who shall have practised as an attorney for at least ten years. The same section makes provision for the appointment of such a judge.

The first Act for the establishing of a court of requests is the 1 James I. c. 15, which confirms the court which had already been established in London by an act of the common council, at least as early as the reign of Henry VIII., if indeed it had not been established by ancient usage. (Tidd Pratt's 'Abstract of the Acts of Parliament relating to Courts of Requests,' for a list of the places which have such courts.)

RESIDENCE. [BENEFICE.]

RESIGNATION. The word Resignation literally signifies an unsealing or breaking of a seal in order to open a testamentary instrument, as in Horace, *Lib. i. Ep. vii. 8*:

*"Officiumque ac clitas et opella formis
Adducti solent, et testamenta resignat."*

The English word Resignation is the proper term to express the giving up of a benefice which the canonists call *Renunciation*. A surrender is the giving up of temporal land into the hands of the lord. A resignation of a benefice must be made to a superior: a parson must resign to his bishop, a bishop to the archbishop, and an archbishop to the king. A donative is to be resigned to the patron, for a donative is received immediately from the patron; but a common benefice is to be resigned to the ordinary who has admitted and instituted the clerk. The

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subject of Resignation Bonds is discussed under BENEFICE, p. 350.

The resignation must be in writing, and contain the proper formal words, of which "resigno," "resign," is one, but not the only one that is necessary. The benefice or ecclesiastical preferment is not vacant until the resignation has been accepted.

The term Resignation is now generally applied to any giving up of an office or place, even to those which are merely honorary, as a seat at a board of directors or at the council of a literary or scientific society. It is usual to accept such resignations formally, though in most cases a man may give up or withdraw from any such place, when he pleases, though he will not thereby alone free himself from any pecuniary demand to which he may in such capacity have made himself liable.

RESIGNATION BONDS. [BENEFICE, p. 352.]

RESPONDENTIA. [BOTTOMRY.]

RESTITUTION.—*Restitution of stolen goods.* By 7 & 8 Geo. IV. c. 29, § 57, if any person guilty of a felony or misdemeanor under that act, in stealing, converting, or receiving any property, shall be indicted for such offence by the owner or his executor, and convicted, the property shall be restored to the owner, and the court before whom the person shall be convicted shall have power to award writs of restitution for the property, or order it to be restored in a summary manner. Provided that if it shall appear that any valuable security shall have been *bona fide* paid or discharged by some person liable to pay it, or being a negotiable instrument shall have been *bona fide* taken or received by transfer or delivery by some person for a valuable consideration, without any reasonable ground to suspect that it had been stolen, &c., then the court shall not order the restitution of such security.

Before this Act, the owner in all cases entitled to restitution on conviction for a felony, but not for a misdemeanor. During the period between the theft and the conviction, or acquittal or death of the prisoner, the ownership of the property is suspended. (2 Inst., 711; Horwood v.

Smith, 2 T. R., 750; "Restitution.")

REVERSION. "A RE is a certain estate remain or donor, after the part possession conveyed to for life, for years, or grant it is called a reversion possession separated from that hath the one, hath the same time, for be together, there cannot sion, because by the u them is drowned in the the reversion of land when it falleth." (T^e Thus if a man seised i veys lands to A for life, tains the reversion in fe cases where the owner person who has an estate part only of his estate, sion; and as the grant there is tenure between grantor has a seignory ing a reversion. When his estate to another, or lar estate to A, and va over, remainder to F reversion left, and the seignory since the pass of Quia Emptores. Th also who precede the r fee, do not hold of such but of the lord of the original owner held. sion is often used inace sometimes necessary to legal signification.

Before the passing of Donis, if a man seised granted his lands to a of his body, he had no grantee was considered ditional fee. But since estate to a man and body has always been a particular estate.

If a man grants a possession, at common reversion until the lessee of his lease, for the life until he enters; but if is created under the s by bargain and sale.

vested *modo* by virtue of the statute, without entering on the land, and consequently the lesser has a reversion. It is said that a reversion cannot be created by deed or other assurance, but arises from construction of law. This means that a reversion is not created by the act of the party who conveys part of his estate, but is a legal consequence of his act. If a man seised in fee simple limits his estate to another for life or in tail, remainder to himself in fee or to his heirs right heirs, he has not a remainder, but a reversion. Yet by a recent statute (3 and 4 Wm. IV. c. 106) the effect of such a limitation is to vest such remainder in fee in the settlor by purchase, and he is not to be considered to be entitled to it as his former estate or part thereof.

A reversion is a vested estate, which may be granted or conveyed, and charged like an estate in possession; and in some cases the reverser in fee may bring an action, as well as the tenant in possession, for an injury to his inheritance.

Feesly is an inseparable incident to a reversion. There may or may not be a rent reserved, but feesly is always due from the owner of the particular estate to the reverser, and it cannot be separated from the reversion, though the rent, if there is one reserved, may be separated from it. Reversions which are expectant on estates for years are subject to dower and courtesy; but this is not the case with reversions expectant on a freehold estate.

By a recent Act (3 and 4 Wm. IV. c. 104), reversionary estates or interests in lands, tenements, and hereditaments, corporeal and incorporeal, are assets to be administered in courts of equity for the payment of a person's debts both on simple contract and on specialty, when such person shall not by his last will have charged such estates or interests with or devised them subject to the payment of his debts.

RIGHT. It has been shown in Law [L. p. 174] that the word *right* occurs under some form in all the Teutonic languages; and that it bears a double meaning equivalent to the significations of the Latin

word *ius*, namely, *law* and *faculty*. The Anglo-Saxon word bore this double meaning, but *right*, in modern English, has lost the signification of *law*, and has retained only its other meaning.

Right, in its strict sense, means a legal claim; in other words, a claim which can be enforced by legal remedies, or a claim the infringement of which can be punished by a legal sanction. It follows from this definition that every right presupposes the existence of positive law.

The causes of rights, or the modes of acquiring them, are various, and can only be explained in a system of jurisprudence; for example, a person may acquire a right by contract, by gift, by succession, by the non-fulfilment of a condition.

Every right correlates with a legal duty, either in a determinate person or persons or in the world at large. Thus a right arising from a contract (for example, a contract to perform a service, or to pay a sum of money) is a right against a determinate person or persons; a right of property (or dominion) in a field or house, is a right to deal with the field or house, availing against the world at large. On the other hand, every legal duty does not correlate with a right; for there are certain absolute duties which do not correlate with a right in any determinate person. Such are the duties which are included in the idea of police; as the duties of cleanliness, order, quiet at certain times and places.

The word right is sometimes used, improperly and secondarily, to signify not legal but moral claims; that is to say, claims which are enforced merely by public opinion, and not by the legal sanction.

In this sense the right of a slave against his master, or of a subject against his sovereign, may be spoken of; although a slave has rarely any legal right against his master, and a subject never has a legal right against his sovereign. It is in the same sense that a sovereign government is sometimes said to have rights against its subjects, although in strictness a sovereign government creates rights, and does not

possess them. In like manner, one sovereign government is said to have rights against another sovereign government; that is to say, moral rights, derived from the positive morality prevailing between independent nations, which is called *international law*.

We likewise sometimes hear of certain rights, styled natural rights, which are supposed to be anterior to civil government, and to be paramount to it. Hence these supposed natural rights sometimes receive all the additional epithets of indefeasible, indestructible, inalienable, and the like. This theory of natural rights is closely connected with the fiction of a social compact made between persons living in a state of nature; which theory, though recommended by the authority of Locke, has now been abandoned by nearly all political speculators.

RIGHT OF COMMON. [COMMONS, RIGHTS OF.]

RIGHT, PETITION OF. [PETITION OF RIGHT.]

RIGHTS, BILL OF. [BILL OF RIGHTS.]

RIGHTS, DECLARATION. [BILL OF RIGHTS.]

RIOT. A riot is a misdemeanour at common law. The definition of it given by Hawkins, and which appears to have been very generally adopted without much alteration by subsequent writers, is "a tumultuous disturbance of the peace by three persons or more, assembling together of their own authority, with an intent mutually to assist one another against any one who shall oppose them in the execution of some enterprise of a private nature, and afterwards executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful." But if the enterprise is for the purpose of redressing grievances generally throughout the kingdom, or to pull down all inclosures, the offence is not a riot, but amounts to a levying of war against the king, and the parties engaged in it are guilty of high treason.

Violence, if not of actual force, yet in gesture or language, and of such a nature as to cause terror, is a necessary ingre-

dient in the offence of riot. The lawfulness of the enterprise operates no further than as justifying a mitigation of the punishment. It does not in any way alter the legal character of the offence. All parties present at a riot who instigate or encourage the rioters, are themselves also to be considered as principal rioters.

Various Acts of Parliament have been passed for the purpose of giving authority to magistrates and others for the purpose of suppressing riots, and restraining, arresting, and punishing rioters. These are collected and commented upon by Hawkins (1 P. C., b. 1, c. 65) and Burn (5 vol., 'Riot' &c.). The most important is 1 Geo. I., c. 5, commonly called the Riot Act. By that statute it is provided that "if any persons to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace, shall continue so assembled for the space of an hour after a magistrate has commanded them by proclamation to disperse, they shall be considered felons."

The form of proclamation is given in the Act, and is as follows:—

"Our sovereign lady the queen chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George, for preventing tumults and riotous assemblies.

"God save the Queen."

This is directed to be read with a loud voice and as near as possible to the rioters; no word must be omitted. Persons who do not disperse within the hour may be seized and apprehended by any magistrate or peace-officer, or any private person who has been commanded by a magistrate or officer to assist. In case of resistance, those who are attempting to disperse or apprehend the rioters will be justified in wounding or killing them. It is felony also to oppose the reading of the proclamation; and if the reading should be prevented, those who do not disperse are still guilty of felony.

ry know that the reading of the proclamation has been prevented.

prosecution under this Act must be commenced within a year after the offence has been committed. By the 7 Geo. IV., c. 30, s. 8, rioters who do or begin to demolish a church or a school, a dwelling-house, or any other of various buildings or machinery mentioned in that Act, are to be considered felons. By 7 & 8 Geo. IV., c. 31, provision is made for remedies against the riot in case of damage done by rioters.

Under that Act compensation may be recovered by action against the hundred any injury done to buildings, or furniture, &c., contained in them, to the amount of 50*l*. Where the damage does amount to 30*l*., inquiry may be made oath of the claimant, or other witnesses, before justices at a petty sessions, are authorised to make an order for payment of damages and costs. An instant of the hundred is made a competent witness for the defendants. In order to recover in either of these proceedings, it is necessary to show that a riot has been committed; and in case of a building, &c., has not been demolished, now that the rioters had begun to demolish it; that is, that their intent was to demolish, although from some reason the intent has not been carried into execution. Unless this intent is proved, the party is not entitled to compensation, however great damage may have been done; and if the intent did exist in mind of the rioters, compensation is payable to the claimant, however slight the damage. If the rioters have been interested in their proceedings, it will be for the jury, or it will be for the justice to say, whether, without such interest, a demolition would have been effected. But if the rioters have voluntarily retired without effecting a demolition, or if, though disturbed, their intention from other circumstances, appears to have been directed towards some other object, as for instance to compel the authorities to illuminate, &c., the parties injured will have no remedy under the statute, as it appears that there was no intent to demolish.

The action must be commenced within three months after the commission of the offence; and to entitle the party injured to bring an action, he, if he had knowledge of the circumstances, or the party in charge of the property, must, within seven days after the injury done, go before a magistrate and give on oath all the information relative to the matter which he possessed, and also be bound over to prosecute the offenders.

With respect to unlawful assemblies of a seditious character, various provisions are enacted by 39 Geo. III., c. 79 and 57 Geo. III., c. 19; and in reference to those for training to the use of arms, by 60 Geo. III., c. 1. [SEDITION.]

(Hawkins, P. C.; East, P. C.; Burn's Justice, vol. 5, 'Riot,' &c.; Russell, On Crimes.) [LAW, CRIMINAL, p. 182.]

RIOT ACT. [RIOT.]

RIVER. In a legal sense rivers are divisible into fresh and salt-water rivers. Salt-water rivers are those rivers or parts of rivers in which the tide ebbs and flows. Rivers are also divisible into public or navigable rivers and private rivers.

The property in fresh-water rivers, whether public or private, is presumed to belong to the owners of the adjacent land; the owner on each side being entitled to the soil of the river and the right of fishing as far as the middle of the stream. But this presumption may be rebutted by evidence of special usage to the contrary. For instance, it may be shown that the river belongs to one person, and the adjacent land to another; or that one party owns the river and the soil of it, and another the free or several fishery of the river. If a fresh-water river between the lands of two owners gains on one side by insensibly shifting its course, each owner continues to retain half the river, and the insensible addition by alluvium belongs to the land to which it attaches itself; unless the lands of the proprietors on each side have been marked out by other known boundaries, such as stakes, in the river. This part of the law as to the acquisition by alluvio, is stated by Bracton in the chapter "De acquirendo rerum dominio" (fol. 9), and his statement both in substance and expression is taken from the Digest (41. tit. 1.

s. 7), with which Gaius may be compared (ii. 70). But if the course of the river is changed suddenly and sensibly, then the boundaries of the lands will be, as they were before, in the midst of the deserted channel of the river. Though fresh-water rivers are presumed to be the property of adjacent landowners, yet such owner cannot set up a ferry and demand a toll unless by prescription or by charter from the king.

In those rivers which are navigable, and in which the public have a common right to a passage, the king is said to have "an interest in jurisdiction," and this is so not only in those parts of them which are the king's property, but also where they are become private property; such rivers are called "fluvii regales," "haut streames le roy," "royal rivers;" not as indicating the property of the king in the river, but because of their being dedicated to the public use, and all things of public safety and convenience being under his care and protection. Thus a common highway on land is called the king's highway, and navigable rivers are in like manner the king's highway by water. Many of the incidents belonging to a highway on land attach to such rivers. Accordingly any nuisances or obstructions upon them may be indicted even though the nuisances be in the private soil of any person; or the nuisances and obstructions may be abated by individuals without process of law. But all the incidents of a land highway do not attach to such rivers. Thus, if the highway of the river is obstructed, a passenger will not be justified, as he would be in the case of a land highway, in passing over the adjacent land. Though a river is a public navigable river, there is not therefore any right at common law for parties to use the banks of it as a towing-path. (Ball v. Herbert, 3 T. R., 253.)

If a river which is private in use as well as in property be made navigable by the owner, it does not therefore become a public river unless from some act it may be presumed that he has dedicated it to the public. The taking of toll is such an act. Callis says that the soil of the sea and of royal rivers belongs to the king. But the expression, if intended to apply

to all parts of the rivers where the public have a right of passage, appears too comprehensive.

But there is no doubt that in some such rivers the property may be in the crown as it was in the river Thames, the property in which, both as to the water and the soil, was conveyed by charter to the lord mayor and citizens of London. As in all rivers as far as the tide flows, the property of the soil is in the king, no other claims it by prescription. In navigable rivers where the tide flows the liberty of fishery is common to the public to all persons. (Hale, *De Jure Maris et Brachiorum ejusdem*; Call v. On Sewers.)

The mere running water belongs to no one; but the proprietor of adjoining land is entitled to the reasonable use of it as runs by his land. "And consequently, the proprietor can have the right to use the water to the prejudice of any other proprietor. Without the consent of the other proprietors who may be affected by his operations, no proprietor can either diminish the quantity of water which would otherwise descend to the proprietors below, or throw the water back upon the proprietors above. Every proprietor claims a right either to throw the water back above, or to diminish the quantity of water which is to descend below, must in order to maintain his claim, either prove an actual grant or licence from the proprietors affected by his operations, or must prove an uninterrupted enjoyment of twenty years."

(*Judgment of Sir J. Leach in Wright v. Howard*; Sim. and Stuart, 109; Call v. On Easements.)

ROAD. [WAX.]

ROBES, MASTER OF THE, an officer of the household who has the ordering of the king's robes. By statute Henry III., the "Gardein de la Garde robe de Roi," the warden of the king's wardrobe, was to make account yearly in the Exchequer, on the feast of St. Margaret. Under a queen, the designation of the office is changed to that of a mistress of the robes. The office has always been one of dignity. High privileges were conferred upon it by King Henry VI., and others by King James

noted the office of master of the
the corporation.

UP AND VAGABOND. [VA-
1.]

18 COURT. [CHANCERY.]

18 MASTER OF THE [CRAN-

18. [BACON.]

18 CATHOLICK. [CATHOLIC
M.; ESTABLISHED CHURCH; RE-
2.]

18 LAW. The historical ori-
the Roman Law is unknown, and
important principles, many of which
survived the legislation of Justin-
as older than the oldest records of
history. The foundation of the

idea of the Roman law as to families,
marriage, testaments, succession,
status, and ownership, was probably
which being recognised by the
power, became law. As in
other states of antiquity, the con-
of the civil with the ecclesiastical
law was most intimate; or, ra-
may consider the law of religion
plainly comprehending all other
its interpretation as belonging
primes and the king exclusively.

was however direct legislation
the period of the kings. Those
which are mentioned under the
of *Leges Regiæ*, were proposed by
the, with the approbation of the
and confirmed by the *populus* in
comitia Curiata, and, after the con-
of Servius Tullius, in the *Co-
Centuriata*. That there were re-
of this ancient legislation existing
the Imperial period, is certain, as
from the notices of the *Jus Civile*
named or *Populianum*, which the
ex. Maximus Papirius is said to
compiled from these sources, about
mediately after the expulsion of
the *Populianus* (*Dis.* i, tit. 2), and
the distinct references to these
made by late writers. Still there
uncertainty as to the exact date
compilation of Papirius, and its
character. Even his name is not
certain, as he is variously called
Servius, and *Paulinus*. (*Dis.* i, tit. 2.)

the earliest legislation of which

we have any important remains is the
compilation called the Twelve Tables.
The original tables indeed are said to
have perished in the conflagration of the
city after its capture by the Gauls, but
they were satisfactorily restored from
copies and from memory, for no ancient
writer who cites them ever expresses a
doubt as to the genuineness of their con-
tents. It is the tradition that a commis-
sion was sent to Athens and the Greek
states of Italy, for the purpose of examin-
ing into and collecting what was most
useful in their codes; and it is also said
that Hermodorus of Ephesus, then an
exile in Rome, gave his assistance in the
compilation of the code. There is some-
thing improbable in this story, and yet it
is undeniable that the laws of the Twelve
were based on Roman and not on Greek
or Athenian law. Their object was to
confirm and define perhaps rather than to
enlarge or alter the Roman law, except in
some few matters; and it is probable that
the laws of Solon and those of other Greek
states, if they had any effect on the leg-
islation of the Decemviri, served rather as
models of form than as sources of positive
rules. The Twelve Tables were a body
of constitutional law as well as other law.

Ten tables were completed and made
public by the Decemviri, in B.C. 451, and
in the following year two other tables
were added. This compilation is quoted
by the ancient writers by various titles:
Lex XII. Tabularum, *Leges XII.*, some-
times *XII.* simply (*Cic. Leg.* ii. 28),
Lex Decemviralis, and others. The rules
contained in these tables long continued
to be the foundation of Roman Law, and
they were never formally repealed. The
laws themselves were considered as a
text-book, and they were commented on
by the Jurists as late as the age of the
Antonines, when Gaius wrote a commen-
tary on them in six books (*Ad Legem
XII. Tabularum*). The actions of the
old Roman law, called *Legitima*, or *Legis
Actiones*, were founded on the pro-
visions of the Twelve Tables, and the
demand of the complainant could only be
made in the precise terms which were
used in the Tables. (*Gaius* iv. 11.)
The rights of action were consequently
very limited, and they were only when

quently extended by the Edicts of the Praetors. The brevity and obscurity of this ancient legislation rendered interpretation necessary in order to give the laws any application; and both the interpretation of the laws and the framing of the proper forms of action belonged to the College of Pontifices. The civil law was thus still inseparably connected with that of religion (*Jus Pontificium*), and its interpretation and the knowledge of the forms of procedure were still the exclusive possession of the patricians.

The scanty fragments of the Twelve Tables hardly enable us to form a judgment of their character or a proper estimate of the commendation bestowed on them by Cicero (*De Or.*, i. 43.) It seems to have been the object of the compilers to make a complete set of rules both as to religious and civil matters; and they did not confine themselves to what the Romans called private law, but they comprised also public law ("*Fons publici privatique juris*," Liv., iii. 34.) They contained provisions as to testaments, successions to intestates, the care of persons of unsound mind, theft, homicide, interments, &c.

They also comprised enactments which affected a man's status, as for instance the law contained in one of the two last Tables, which did not allow to a marriage contracted between a patrician and a plebeian the character of a legal Roman marriage, or, in other words, declared that between patricians and plebeians there could be no *Connubium*. Though great changes were made in the *Jus Publicum* by the various enactments which gave to the plebeians the same rights as the patricians, and by those which concerned public administration, the fundamental principles of the *Jus Privatum*, which were contained in the Tables, remained unchanged, and are referred to by jurists as late as the time of Ulpian.

The old *Leges Regiae*, which were collected into one body by Papirius, were commented on by Granius Flaccus in the time of Julius Cæsar (*Dig.*, l. tit. 16, s. 144), and thus they were probably preserved. The fragments of these laws have been often collected, but the best essay upon them is by Dirksen, 'Ver-

suchen zur Kritik und Auslegung Quellen des Römischen Rechts,' Leipzig, 1823. The fragments of the Twelve Tables also have been often collected. The best works on the subject are those of James Godefroy (Jac. Gothofredus), and the more recent work of Dirksen, 'Ursicht der bisherigen Versuche zur Kritik und Herstellung des Textes der Zwölftafel-Fragmente,' Leipzig, 1824.

For about one hundred years after the Legislation of the Decemviri, the patricians retained their exclusive possession of the forms of procedure. Appianus Cæcilius drew up a book of the forms of actions, which it is said that his father, Cnaeus Flavius stole and published. The fact of the theft may be doubted, but that of the publication of the forms of procedure, and of a list of the *Dies* and *Nefasti*, rests on sufficient evidence. The book thus made public by Flavius was called *Jus Civile Flavianum*, like that of Papirius it was only a compilation. The publication of these books must have had a great effect on the practice of the law: it was in reality equivalent to an extension of the privileges of the plebeians. Subsequently Sextus Aelius published another work, called *Aelianum*, which was more complete than that of Flavius. This work was extant in the time of Pompey (*Dig.*, i. tit. 2, s. 2, § 39), was also called "Tripartita," from the circumstance of its containing the laws of the Twelve Tables, a commentary upon them (*Interpretatio*), and the *Legis Actiones*. The work of Aelius appears to have been considered in later times as one of the sources of the civil law (*veluti cæna juris*); and he received from his contemporary Ennius the name of "wise."

"Egregie cordatus homo vetus Aelius Sextus Aelius was *Curule Aedile*, 200, and *Consul*, B.C. 198.

In the Republican period new laws (*leges*) were enacted both in the *Comitia Centuriata* and in the *Comitia Tributa*. The *Leges Curiatæ*, which were enacted by the *curiæ*, were limited to emergency and the conferring of the *imperium*. The *Comitia Centuriata* made independent of the *Curia*.

the *Publilia* (Liv., viii. 12), which demanded that the laws passed in these Comitia should not require the confirmation of the patres, that is, the Comitia Curiata. The laws passed in the Comitia Tributa or properly called *Leges Tributa Plebiscita*, and originally they were only proposals for a law which were affirmed by the curiae. But the *Lex Hortilia* (a.c. 286), and subsequently the *Lex Horatiana* (a.c. 286), gave to the plebeians the full force of laws without the assent of the patres (Liv., viii. 12; Inst. i. 2; Gell., xv. 27); and a *Plebiscitum* was accordingly sometimes called *lex*. The laws generally took their name from the gentile name of the magistrate who proposed them (*rogavit*), and sometimes from the name of both consuls, *Lex Aelia* or *Aelia Sentia*, *Papia* or *Papia Poppaea*. If the proposer of the law was a dictator, praetor, or tribune, the *Lex* or *Plebiscitum*, as the case might be, took its name from the proposer only, *Lex Hortensia*. Sometimes the object of the law was indicated by a descriptive term, as *Lex Cincia de donis et muneribus*. The *Senatus Consulta* also formed a sort of law under the republic. That *senatus consultum* in the time of Gaius (i. 6) should have the force of law (*vicem legis optinet*), may be easily admitted; for Gaius in this passage appears to be referring not only to such *senatus consulta* that had been passed under the empire, but to the *senatus consulta* generally as a sort of law. Probably the senate gradually came to be considered in some degree as the representative of the curiae, & its *consulta*, in many matters relating to administration, the state of religion, the census, and the administration of the provinces, had the full effect of laws. It is not seen as if the Romans themselves had a very clear notion of the way in which the senate came to exercise the power of legislation; but they imagined it in some of necessity with the increasing population of the state and the increase of public business. The senate became an active administering body, and, as an easy consequence, that which it enacted (*senatusait*) was observed, & this new source of law was termed *senatus Consultum* (Dig., i. tit. 2). It

seems probable that the senate began to exercise the power of making *senatus consulta* after the passing of the *Hortensia Lex*, though it is not pretended that the *Hortensia Lex* or any other *Lex* gave this power to the senate. No *senatus consulta* are recorded as designated by the names of magistrates, till the time of Augustus; a circumstance which seems to show that whatever binding authority *senatus consulta* might have acquired under the Republic, they were not then viewed as laws properly so called. But from the time of Augustus, the titles of *senatus consulta* frequently occur; their names, like those of most of the laws, were derived from the consuls, as S. C. Velleianum, Pegasusum, Tribellianum, &c., or of the emperor who proposed them, as S. C. Claudianum, Neronianum, &c., or they were said to be made "*auctoritate Principis*," or "*ex auctoritate Principis*." The expression applied to the senate, so enacting, was "*consensu*." (Gaius, i. 47.) Special *consulta* were sometimes passed for the purpose of explaining or rendering effectual previous laws.

A new source of law was supplied by the Edicts of those magistrates who had the *Jus Edicendi*, but mainly by the praetors, the praetor urbanus and the praetor peregrinus. The edicts of the praetor urbanus were the most important. The body of law which was formed by the Edicts is accordingly sometimes called *Jus Praetorium*, which term however might be limited to the Edicts of the praetors, as opposed to those of the curule aediles, the tribunes, censors, and pontiffs. The name *Jus Honorarium*, as opposed to *Jus Civile*, comprehends the whole body of official law; and the name *Honorarium* was given to it, apparently because the *Jus Edicendi* was exercised only by those magistrates who had the Honores. *Jus Civile* in its larger sense comprehended all the law of any given nation; but the *Jus Civile Romanorum*, as opposed to the *Honorarium*, consisted of *Leges*, *Plebiscita*, *Senatus Consulta*, to which, under the empire, were added the *Decreta Principum* and the *Auctoritas Prudentium*. The *Honorarium Jus* was introduced for the purpose of filling, supplying, and correcting the defects of the

Jus Civile Romanorum in its limited sense. (*Dig.* i., tit. 1, s. 7.) The nature of the Roman Edictal Law is explained at the end of the article *EDICTUM*.

With the establishment of the Imperial Constitution begins a new epoch in the Roman law. The leges of Augustus and those of his predecessor had some influence on the Jus Privatum, though they did not affect the fundamental principles of the Roman law. A Lex Julia came into operation, B.C. 13, but it is better known as the Lex Julia et Papia Poppaea, owing to the circumstance of another lex of the same import, but less severe in its provisions, being passed as a kind of supplement to it in the consulship of M. Papius Mutilus and Q. Poppaeus Secundus, A.D. 9. This law had for its object the encouragement of marriage, but it contained a great variety of provisions. A Lex Julia de Adulteriis, which also contained a chapter on the dos, is of uncertain date, but was probably passed before the former Lex Julia came into operation. Several Leges Juliae Judiciarum are also mentioned, which related both to Judicia Publica and Privata, and some of which may probably belong to the time of the dictator Cæsar.

The development of the Roman law in the Imperial period was little affected by direct legislation. New laws were made by Senatus Consulta, and subsequently by the Constitutiones Principum; but that which gives to this period its striking characteristic is the effect produced by the Responsa and the writings of the Roman jurists.

So long as the law of religion or the Jus Pontificium was blended with the Jus Civile in its limited sense, and the knowledge of both was confined to the patricians, jurisprudence was not a profession. But with the gradual separation of the Jus Civile and Pontificium, which was partly owing to the political changes by which the estate of the plebeians was put on a level with that of the patricians, there arose a class of persons who are designated as Jurisperiti, Jurisconsulti, Prudentes, and by other equivalent names. Of these jurisconsulti the earliest on record is Tiberius Coruncanus, a plebeian Pontifex Maximus, and consul B.C. 280;

he is said to have been the first who professed to expound the law to any person who wanted his assistance; he left no writings, but many of his Responsa were recorded. Tiberius Coruncanus had a long series of successors who cultivated the law, and whose responsa and writings were acknowledged and received as a part of the Jus Civile. The opinions of the jurisconsulti, whether given upon questions referred to them at their own houses, or with reference to matters in litigation, were accepted as the safest rule by which a judex or an arbiter could be guided. Accordingly, the mode of proceeding, as it is described by Pomponius, is perfectly simple; the judices in difficult cases took the opinion of the jurisconsulti, who gave it either orally or in writing. Augustus, it is said, gave the responsa of the jurists a different character. Before his time, their responsa, as such, could have no binding force, and they only indirectly obtained the character of law by being adopted by those who were empowered to pronounce a sentence. Augustus gave to certain jurists the respondendi jus, and declared that they should give their responsa "ex ejus auctoritate." In the time of Gaius (i., 7) the Responsa Prudentium had become a recognised source of law; but he observes that the responsa of those only were to be so considered who had received permission to make law (jura condere); and he adds that if they all agreed, their opinion was to be considered as law; if they disagreed, the judex might follow which opinion he pleased. The matter is thus left in some obscurity, and, for want of more precise information, we can only conjecture what was the precise way in which these licensed jurists under the empire were empowered to declare the law. It is however clear, both from the nature of the case and the statement of Gaius, that their functions were limited to exposition, or to the declaration of what was law in a given case, and that they had no power to make new rules of law as such; further, the licensed jurists must have formed a body or college, for otherwise it is not possible to conceive how the opinions of the majority could be ascertained on any given occasion.

commencement of a more systematic exposition of law under the empire caused by the fact of the existence of distinct sects or schools (*scholæ*) of

These schools originated under the heads of each were variety two distinguished jurists, *Antisthenes* and *Atreus Capito*. But the school took their names from other jurists. The followers of *Capito's* school, *Sabinian*, derived their name from *Titus Sabinus*, a pupil of *Capito*, who under *Tiberius* and as late as the *Flavian* period; sometimes they were called *Antisthenian*, from *C. Cassius Longinus*, an distinguished pupil of *Capito*. The school was called *Procullian*, from *Proculeius*, a follower of *Antisthenes*. If we take the authority of *Pomponius*, a characteristic difference of the two schools was this: *Capito* adhered to what was established, that is, he looked out for rules sanctioned by time; *Antisthenes* was learning and a greater variety of knowledge, and accordingly he was to make innovations, for he had confidence in himself; in other words, he was a philosophical more than a practical jurist. *Gaius*, who was a *Sabinian*, often refers to discrepancy of opinion between the two schools; it is not easy to collect from the instances which he mentions, what ought to be considered as their characteristic differences. Much has been written on the characteristics of these two schools; early all that we know is contained in few words of *Pomponius*, of which *Quintus* (*Quintus de Institutionibus*, l. 455) gives perhaps the most satisfactory description.

The jurists were not only authors and expositors of law, but they were also famous writers. *Massurius Sabinus* wrote three books *Juris Civilis*, which formed the model of subsequent works. The commentators on the *Edict* were also very numerous, and among the names of *Pomponius*, *Gaius*, *Paulus*, and *Ulpian*. *Gaius* wrote an elementary work, which furnished the basis of the *Institutiones* of *Justinian*. Commentaries were also written on various parts of the law, and on the *Senatus Consulta* of the Imperial period; and finally, the

writings of the earlier jurists themselves were commented on by their successors. The long series of writers to whom the name of classical jurists has been given, ends about the time of *Alexander Severus*, with *Modestinus*, who was a pupil of *Ulpian*. Some idea may be formed of the vast mass of their writings from the titles of their works as preserved in the '*Digest*,' and from the '*Index Florentinus*;' but with the exception of the fragments which were selected by the compilers of that work, this great mass of juristical literature is nearly lost.

Among the sources of law in the Imperial period are the Imperial Constitutions, the nature of which has been explained. [CONSTITUTIONS, ROMAN.]

With the decline of Roman jurisprudence began the period of compilations, or codes, as they were termed. The earliest were the *Codex Gregorianus* and *Hermogenianus*, which are only known from fragments. The *Codex Gregorianus*, so far as we know it, began with the constitutions of *Sept. Severus*, and ended with those of *Diocletian* and *Maximian*. The *Codex Hermogenianus*, so far as it is known, contained constitutions also of *Diocletian* and *Maximian*, and perhaps some of a later date. Though these codes were mere private collections, they apparently came to be considered as authority, and the codes of *Theodosius* and *Justinian* were formed on their model.

The code of *Theodosius* was compiled under the authority of *Theodosius II.*, emperor of the East. It was promulgated as law in the Eastern empire, A.D. 438; and in the same year it was confirmed as law in the Western empire by *Valentinian III.* and the Roman senate. This code consists of sixteen books, the greater part of which, as well as of the *Novellæ*, subsequently promulgated by *Theodosius II.* are extant in their original form. The commission who compiled it were instructed to collect all the *Edicta* and *Leges Generales* from the time of *Constantine*, and to follow the *Codex Gregorianus* and *Hermogenianus* as their model. Though the arrangement of the subsequent code of *Justinian* differs considerably from that of *Theodosius*, it is clear from a comparison of them that the com-

pillars of Justinian's code were greatly aided by that of his Imperial predecessor. The valuable edition of the Theodosian Code, by J. Gothofredus (6 vols. fol., Lugd., 1665), re-edited by Ritter, Leipzig, 1736-1745, contains the first five books and the beginning of the sixth, only as they are epitomized in the Breviarium; and this is also the case with the edition of the 'Jus Civile Antejustinianum,' published at Berlin in 1815. But recent discoveries have greatly contributed to improve the first five books. The most recent edition of the 'Jus Civile Antejustinianum' is that of Bonn, 1835 and 1837.

The legislation of Justinian is treated of under JUSTINIAN'S LEGISLATION.

There are numerous works on the history of the Roman law, but it will be sufficient to mention a few of the more recent, as they contain references to all the earlier works: *Lehrbuch der Geschichte des Römischen Rechts*, by Hugo, of which there are numerous editions; *Geschichte des Römischen Privatrechts*, by Zimmern; *Geschichte des Römischen Rechts*, by F. Walter, 1840; and for the later history of the Roman law, *Geschichte des Römischen Rechts im Mittelalter*, by Savigny.

ROUNDHEADS, a name given to the republicans in England, at the end of the reign of Charles I. and during the Commonwealth. The name seems to have been first applied to the Puritans because they wore their hair cut close, but to have been afterwards extended to the whole republican party. The Cavaliers, or royal party, wore their hair in long ringlets.

ROYALTY. The French words *roi* and *royal* correspond to the Latin words *rex* and *regalis*; and from *royal* has been formed *royauté* (now *royauté*); whence has been borrowed the English word *royalty*. The corresponding Latin word is *regalitas*, which occurs in the Latin of the middle ages. (Ducange, *in v.*)

Royalty properly denotes the condition or status of a person of royal rank, such as a king or queen, or reigning prince or duke, or any of their kindred. The possession of the royal status or condition does not indicate that the pos-

essor of it is invested with any definite political powers; and the *royalty* is not equivalent to *monarchical sovereignty*. A royal person is not necessarily a monarch; or, in other words, does not necessarily possess the sovereign power. The powers possessed by persons of royal dignity have been very different in different times and places; and have varied from the performance of some merely honorary functions to the exercise of the entire sovereignty. [KING, SOVEREIGNTY.]

In popular discourse *royalty* is equivalent to *monarchy* or *sovereignty*, and a king is called monarch or reign without any reference to whether he possesses the entire sovereign power or only a portion of it. The principal causes of this confusion are stated in MONARCHY. The confusion is attended with important consequences both in speculative and practical philosophy.

RUBRIC (from the Latin *rubra*, kind of red earth or stone), a name applied to the titles of chapters in certain law-books: and more especially to the rules and directions laid down in the Liturgy for regulating the order of service. These, in both instances, were formerly written or printed, as they might be, for distinction's sake, in red characters, and have retained the name, though now printed in black. The Latin language *rubrica* has many meanings. It signifies a heading of the things which are contained in a law or in an edict. Thus there is an interdict called *Unde vi* from its being written in red, and *Unde vi* was according to the rubrica or heading under which the edict would be found (*Dig.* 43, 1, 1).

RULE (in Law) is an order of the three superior courts of Common Law. Rules are either general or particular.

General rules are such orders as relate to matters of practice as are laid down and promulgated by the court. Particular rules are a declaration of what the court do, or require to be done, in all cases falling within the terms of the rule. The power of issuing rules for regulating the practice of each court is inherent in the jurisdiction of the court. B

for all Parliament (3 & 4 Wm. 1st). The judges were authorized, five years from the date of it, to make rules of a more congruous union, relating especially to us in civil actions. These rules being laid before both houses of court within certain times mentioned in the Act, were to have "the like and effect as if the provisions contained had been expressly made by parliament." In exercise of authority, a number of rules, then called "The New Rules," were promulgated, which have since undergone material changes in the act of pleading. (*Stephens on Pleading in Chancery*; *Jervis on the Rules*.) Formerly such court of common law issued its own general rules, at least as to the practice in its courts. Of late the object has been to assimilate the practice in all the courts of common law.

As not general are such as are confined to the particular case in reference to which they have been granted. Of some, which are said to be "of course," are shown up by the proper officer on the authority of the court or of counsel, without any formal motion to the court; or in some instances, as upon a judge's fiat or allowance by the master, &c., without any use by counsel; others require to be moved in as well as signed by counsel. Rules which are not of course, require an application, or, as it is usually termed, "the motion," either by the party actually interested or of his counsel. Where the grounds of the motion are required to be particularized, the necessity to support it must be shown in an affidavit by competent witnesses.

After the motion is heard, the court grants or refuses the rule. When granted, may, according to custom, be either "to show cause" or "to absolute in the first instance." The term "rule to show cause," called a "rule nisi," means that the party against whom it has obtained shows sufficient cause to contrary, the rule, which is conditional, becomes absolute. After a

rule nisi has been obtained, it is shown up in form by the proper officer, and served by the party who obtains it upon the party against whom it has been obtained, and notice is given him to appear in court on a certain day and show cause against it. He may do this either by showing that the facts already disclosed do not justify the granting of the application, or he may contradict those facts by further evidence. The counsel who obtained the rule is then heard in reply. If the court think proper to grant the application, or if no one appears to oppose it, the rule is said to be made "absolute." If they refuse the application, the rule is said to be "discharged."

Rules may be moved for either in reference to any matter already pending before the court, as for a change of venue in an action already commenced, or for a new trial, &c.; or in respect of matters not pending before the court, as for a criminal information, a mandamus, &c.

A copy of a rule obtained from the proper officer is legal proof of the existence of such a rule. (*Tidd's Practice*; *Archbold's Practice*.)

The rules which regulate the practice of the Court of Chancery are called orders.

RURAL DEAN. [DEAR.]
RURRIA COMPANY. [JOSEPH STONE COMPANY, p. 122.]

8.

SACRILEGE (from the Latin *sacrilegium*) is "the felonious taking of any goods out of any parish-church or other church or chapel." By the common law it was a capital offence, though the offender seems to have been entitled to the benefit of clergy at the discretion of the ordinary. But even if it were not clergyable at the common law, yet the statute 21 Edw. III. c. 6, "De Clero," comprehended this as well as other crimes, and gave "the privilege of holy church to all manner of clerks, as well secular as religious." Sacrilege was apparently the only felony at common law which brought

the offender of the privilege of sanctuary.

The present state of the law of sacrilege depends on the statute 7 & 8 Geo. IV. c. 29, s. 10, which enacts that "if any person shall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel in any church or chapel, shall break out of the same, every such offender, being convicted thereof, shall suffer death as a felon."

By 9 Geo. IV. c. 55, s. 10, the same protection was extended to meetings-houses and all places of divine worship.

By statute 5 & 6 Wm. IV. c. 81, the punishment of death was abolished, and transportation for life or for any term not less than seven years, or imprisonment with or without hard labour for any term not exceeding four years, was substituted in its place. These penalties were again altered by 6 Wm. IV. c. 4, which limited the term of imprisonment to three years, and gave to the court a discretionary power of awarding any period of solitary confinement during such term. But now, by the statute 7 Wm. IV. and 1 Vict. c. 90, s. 5, no offender may be kept in solitary confinement for more than one month at a time, or three months in the space of one year.

The Roman *sacrilegium* was defined to be the "stealing of sacred things" (*sacrum rerum furtum*), that is, the robbing temples or stealing things from them which had been appropriated to the purposes of religion. It was not unusual for persons to deposit their money in temples for safe keeping; and it was a doubtful question whether the stealing of such money was sacrilege. A rescript of Septimius Severus and Caracalla determined that the taking of a private person's money from a temple was only theft. (*Dig.*, xlviii., tit. 19, s. 5). In the Republican period *Sacrilegium* had also the wider meaning of any offence against religion, a principle which was more fully developed in the Imperial period. The *Lex Julia* on *Peculatus*, which was the embezzlement of public property, placed *Sacrilegium* on the same footing with *Peculatus* as to the penalties.

(*Rein, Criminalrecht der Römer*, p. 69).

SAILORS. [SHIPS.]

SALVAGE. [SHIPS.]

SANCTION. [LAW, p. 175.]

SANCTUARY, a consecrated place which gave protection to a criminal taking refuge there. The word also signified the privilege of sanctuary, which was granted by the king for the protection of the life of an offender. Under the dominion of the Normans there apparently to have existed two kinds of sanctuary, one general, which belonged to every church, and another peculiar, which originated in a grant by charter from the king. The general sanctuary afforded a refuge to those only who had been guilty of capital felonies. On reaching it, the felon was bound to declare that he had committed felony, and came to save his life. [ABJURATION OF THE REALM.] A peculiar sanctuary might, if such privilege was granted by the charter, afford a place of refuge even for those who had committed high or petty treason; and a party escaping thither might, if he chose, remain undisturbed for life. He still, however, had the option to take the oath of abjuration and quit the realm. Sanctuary seems in neither case to have been allowed as a protection to those who escaped from the sheriff after being delivered to him for execution. During the latter part of the reign of Henry VIII., at the time when the religious houses were dissolved, several statutes were passed (26 Hen. VIII. c. 13; 3 Hen. VIII. c. 19; 32 Hen. VIII. c. 12), which regulated, limited, and partially abolished the privilege of sanctuary both as regarded the number and class of criminals entitled to it, and also the places possessing the privilege. Finally by 21 James I. c. 28, s. 7, it was enacted that no sanctuary or privilege of sanctuary should thereafter be admitted allowed in any case. [ABJURATION OF THE REALM: ASYLUM.]

(*Reeve's History of the English Law*, Comyn's *Digest*, tit. 'Abjuration'; Blackstone, *Com.*)

SAPPERS AND MINERS, ROYAL, the non-commissioned officers and rates of the corps of Royal Engineers. They are employed in building and repairing permanent fortifications, in mining, field-rebates and batteries, in making

of facilities, in digging trenches for galleries of mines during the war, also in forming bridges of boats, and pontoons.

Up to the peace in 1814, the officers and miners amounted to 1000, and during the hostilities in 1800 of 2421 men. At present of 13 companies, each of 100, besides the regular course in digging, mining, making mines, &c., the men are taught elementary principles of fortification, of drawing plans and sections of buildings, and, to a certain extent, of land-surveying. Several companies are employed in the exercise of their profession; and of those which remain at home, some are engaged under the engineers in the mechanical connected with the survey of the coast and Ireland which is being carried on by the Board of Ordnance; the corps also regularly attend Military College at Sandhurst or India Company's seminary at Madras, where they execute, for the use of the gentlemen-cadets, the works connected with the fortification. The troops are here invariably, in whatever world they have been educated themselves as intelligent steady soldiers.

SAVINGS' BANKS are banks encouraging habits of prudence in the classes who were previously in places where they could not profitably deposit their savings. The first savings' bank has been at the Rev. Joseph Smith, of Manchester, who, in the year 1790, circulated, in conjunction with two dissenters, in which they offered to any inhabitant of the town from twopence upwards by evening during the summer keep an exact account of the interest, and to repay at Christmas individual the amount of his share the addition of one-third to the depositors were at liberty and receive back the amount with interest, without the addition of

one-third, at any time before Christmas, if they stood in need of their money.

The next institution of this kind that was established, of which we have any account, was founded at Tottenham, in Middlesex, by Mrs. Priscilla Wakefield. This, which was called the Charitable Bank, bore a nearer resemblance to the savings' banks of the present day than the Wendover plan. The Tottenham bank was opened in 1804. At first the accounts were kept by Mrs. Wakefield, who was assisted by six gentlemen who undertook each to receive an equal part of the sums deposited, and to allow five per cent. interest on the same in such deposits of 20 shillings and upwards as should leave their money for at least a year in their hands. In proportion as the amount of the deposits increased, additional trustees were chosen, so as to diminish the loss which might otherwise have been considerable, owing to the high rate of interest that was allowed. In 1808 a society was formed at Bath, managed by eight individuals, four of whom were ladies, who received the savings of domestic servants, and allowed interest upon the same at the rate of four per cent.

The Parish Bank-Friendly Society of Rotherwell was formed in 1810 by Mr. Henry Darnley, who published an account of his institution with the hope of promoting similar establishments elsewhere. This was the first savings' bank regularly organized, which was brought before the public, and it is owing to this successful undertaking that previous to the year 1817 there were seventy savings' banks established in England, four in Wales, and four in Ireland.

In the year 1817 legislative provisions were made for the management of these institutions. Acts were passed (37 Geo. III. c. 103 and 130) for encouraging the establishment of banks for savings in Ireland and England respectively. Under these acts, the trustees and managers, who were prohibited from receiving any personal profit or advantage from the institutions, were required to enrol the rules of their institutions at the sessions. A fund was established in the office for the reduction of the national debt in London, entitled, 'The Fund for the Banks for

Savings,' and to this fund the trustees were bound to transmit the amount of all deposits that might be made with them when the sum amounted to 50*l.* or more. For the amount so invested the trustees received a debenture, carrying interest at the rate of threepence per centum per diem, or 4*l.* 11*s.* 3*d.* per centum per annum, payable half-yearly. The rate of interest then usually allowed to depositors was four per cent. In Ireland the depositors were restricted to the investment of 50*l.* in each year, and in England the same restriction was imposed, with a relaxation in favour of the first year of a person's depositing, when 100*l.* might be received. No further restriction was at this time thought necessary as to the amount invested, neither was the depositor prevented from investing simultaneously in as many different savings' banks as he might think proper. This circumstance was found liable to abuse, and an Act was passed in 1824, which restricted the deposits to 50*l.* in the first year of the account being opened, and 30*l.* in each subsequent year, and when the whole should amount to 200*l.* exclusive of interest, no further interest was to be allowed. Subscribers to one savings' bank were likewise not allowed to make deposits in any other, but the whole money deposited might be drawn from one savings' bank in order to be placed in another.

In 1828 a further Act was passed, entitled 'An Act to consolidate and amend the laws relating to Savings' Banks,' and it is under the provisions of this Act (9 Geo. IV. c. 92), and of 7 & 8 Vict. c. 83, that all savings' banks are at present conducted. It is provided by the 7 & 8 Vict. c. 83, s. 19, that two written or printed copies of all rules or alterations of rules of savings' banks, signed by two trustees, shall be submitted to the barrister appointed under 9 Geo. IV. c. 92, for his certificate, and the said barrister must return one of such copies when certified to the trustees and transmit the other to the commissioners for the reduction of the national debt. This provision stands in place of the provision in 9 Geo. IV. c. 92, which required that a transcript of the rules of a savings' bank or government annuity society should be deposited

with or filed by the clerk of the peace, and a certificate thereof returned to the institution, and that such transcript should be laid before the justices at sessions.

The money deposited in savings' banks must be invested in the Bank of England, or of Ireland, in the names of the commissioners for the reduction of the national debt. The receipts given to the trustees of savings' banks for money thus invested bear interest at the rate of 3*l.* 5*s.* per cent. and the interest paid to depositors must not exceed 3*l.* 0*s.* 10*d.* per cent. per annum, the difference being retained by the trustees to defray the expenses of the bank. The trustees are not allowed to receive deposits from any individuals whose previous deposits have amounted to 150*l.*, and when the balance due to any one depositor amounts with interest to 200*l.*, no further interest is to be allowed; and not more than 30*l.* can be deposited by one person in any one year. Trustees or treasurers of any charitable provident institution, or charitable donation or bequest for the maintenance, education, or benefit of the poor, may invest sums not exceeding 100*l.* per annum, and not exceeding 300*l.*, principal and interest included. Friendly societies whose rules have been certified pursuant to acts of parliament relating thereto, may deposit the whole or any part of their fund.

The increase of savings' banks has been great beyond all expectation. On the 20th of November, 1833, there were 385 savings' banks in England holding balances belonging to 414,014 depositors, which amounted to 13,973,243*l.*, being on an average 34*l.* for each depositor. There were at the same time in Wales 23 savings' banks, having balances amounting to 361,150*l.*, belonging to 11,269 depositors, being an average of 32*l.* for each depositor; while in Ireland there were 76 savings' banks, with funds amounting to 1,380,718*l.*, deposited by 49,872 persons, the average amount of whose deposits was 28*l.* The total for England, Wales, and Ireland was consequently 484 savings' banks, with funds amounting to 15,715,111*l.*; the number of accounts open was 475,155, and the average amount of deposits was consequently 33*l.* On the 20th of November, 1823, there were

575 depositors of sums under 20*l.* in savings' banks of England, Wales, Ireland, whose savings amounted to 4,700*l.*, being an average of 7*l.* 1*s.* for each depositor.

By the 3 Wm. IV. c. 14, the industrious are encouraged to purchase annuities to commence at any deferred period at the purchaser may choose, the money being paid either in one sum at the time of agreement, or by half, monthly, quarterly, or yearly instalments, as the purchaser may determine. The transactions under this Act are to be carried on through the medium of savings' banks, or by societies established for the purpose, and of which the vicar or other minister of the parish, or a justice of the peace, shall be one of the trustees. The 7 & 8 Vict. c. 83, contains some fresh regulations as to these offices, as well as to other matters that concern savings' banks. This act extends societies for purchasing annuities as far as to savings' banks, and to Great Britain and Ireland, Berwick-upon-Tweed, Jersey, and the Isle of Man. Rules framed in agreement with the Act have been issued by the commissioners for the reduction of the national debt. These rules provide, among other things, that no person being a trustee, officer, or manager of the society, shall receive any emolument, direct or indirect, on its funds; that the treasurer, and paid officers of the society shall give security for the faithful execution of their duty; that the age of the party, or nominee, upon whose life the annuity is contracted, must not be under fifteen years; that no one individual can possess, or be entitled to, an annuity, or annuities, amounting altogether to more than 20*l.* *l.*, by the 7 & 8 Vict. c. 83, that no annuity of less than 4*l.* can be contracted for; that minors may purchase annuities. The annuities are payable half-yearly, on the 5th of January and 5th of July, or on the 5th of April and 5th of October. If any person wishes to have an annuity payable quarterly, that object may be accomplished by purchasing one half payable in January and July, and the other half payable April and October. Upon the death

of the person on whose life the annuity depends, a sum equal to one-fourth part of the annuity, beyond all unpaid arrears, will be payable to the person or persons entitled to such annuity, or to their executors or administrators, if claimed within two years. These annuities are not transferable, unless the purchaser becomes bankrupt or insolvent, when the annuity becomes the property of the creditors, and will be repurchased, at a fair valuation, by the commissioners for the reduction of the national debt. If the purchaser of an annuity should be unable to continue the payment of his instalments, he may at any time, on giving three months' notice, receive back the whole of the money he has paid, but without interest. If the purchaser of a deferred life annuity should die before the time arrives at which the annuity would have commenced, the whole of the money actually contributed, but not with interest, will be returned to his family without any deduction. If a person who has contracted for, or is entitled to, an annuity, becomes insane, or is otherwise rendered incapable of acting, such weekly sum will be paid to his friends for maintenance and medical attendance as the managers shall think reasonable, or any such other payments may be made as the urgency of the case may require, out of the sums standing in the name of the party. Any frauds that may be committed by means of misstatements and false certificates will render void the annuity, and subject the parties offending to other and severe penalties. The rules of societies formed for carrying into effect the purposes of this act must be signed by trustees, and duly certified by the barrister appointed for the purpose.

Annuity tables, calculated under the direction of Government, for every admissible period of age, and for every probable deferred term, may be had at the office of the commissioners for reducing the national debt, in the Old Jewry, London. Every information respecting, and forms of rules, &c., for the establishment, &c., of friendly societies, building societies, loan societies, savings' banks, and government annuity societies, may be obtained free of expense, on applying, by letter, post-paid, directed to the Secy

SUMMARY of the 577 SAVINGS' BANKS in ENGLAND, SCOTLAND, WALES, and IRELAND, on the 30th Nov., 1844.

ENGLAND.						SCOTLAND.				WALES.				IRELAND.				TOTAL.			
Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	Number of Depositors.	Amount of Investments.	Average Amount invested by each Depositor.	
813,401	23,409,371	28	68,791	966,149	14	18,007	518,348	28	90,144	2,683,698	29	990,343	27,632,366	28							
9,789	311,073	32	630	28,880	45	295	12,063	58	677	41,233	60	11,301	592,249	52							
8,900	1,132,421	127	403	48,154	119	478	69,355	145	422	22,086	52	10,203	1,272,046	124							
839,290	23,112,865	30	69,824	1,043,183	14	18,690	569,796	32	91,243	2,749,017	30	1,012,047	29,204,361	29							
Total . . .																		428	1,770,772	..	

Number and Amount of Individual Depositors in Savings Banks.	Number and Amount of Charitable Institutions in account with savings banks . . .	Number and Amount of Friendly Societies in account with Savings Banks.	Number and Amount of Friendly Societies in direct account with the Commissioners for the Reduction
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Number and Amount of Individual Depositors in Savings' Banks and Charitable Institutions in account with Savings' Banks . . .

Number and Amount of Friendly Societies in account with Savings' Banks.

Number and Amount of Friendly Societies in direct account with the Commissioners for the Reduction

ter appointed to certify the rules of friendly societies.

The 5 & 6 Wm. IV. c. 57, passed in September, 1835, extended the provisions the 9 Geo. IV. c. 92, and of 3 Wm. IV. 14, to savings' banks in Scotland, and obliged existing banks to conform to the Acts by preparing and depositing six rules pursuant to these Acts.

Military or Regimental Savings' Banks are established by warrant dated October 11, 1843. The following is the amount of all sums deposited in them within the year ended March 31, 1844; all sums withdrawn during the same period; and of the interest allowed upon the deposits; and also of the number of depositors on the 31st of March, 1844:—

	£	s.	d.
Amount of sums deposited	15,069	3	2
Amount of deposits withdrawn		316	11 3½
Amount of interest allowed	96	10	1½
Balance due by the public	14,849	1	11½
Number of depositors	1,890.		

(*History of Savings' Banks*, by J. Tidd; *and: The Law relating to the Purchase of Government Annuities through Savings' Banks and Purochial Societies*, by the same author; *A Summary of Savings' Banks*, &c., by the same author, 1846.)

SCANDAL. [LIEB; SEANDER.]

SCHOOLS. A school is a general name for any place of instruction. There are schools for young children, called Infant Schools; schools for children of more advanced age; and schools for the higher branches of learning, as Grammar Schools, Colleges, and Universities. There are also schools for special branches of knowledge, as schools for Agriculture, Medicine, Theology, Law, and so forth.

The school systems of all nations have something peculiar; and the peculiarities are closely connected with the political system of each country. A good system of schools of all kinds suited to the wants of a political community perhaps exists in no country, though some of the German states have perhaps approached nearer to establishing such a system than any other countries. There are no modes in which good schools may be established; a government may make a whole school system a part of ad-

ministration, and leave very little to individual enterprise and competition; or the establishment of schools of all kinds may be left nearly altogether to individual enterprise. Perhaps in no country has either the one or the other mode been altogether followed. Prussia is an instance in which the government has apparently done most in the way of directing the establishment and management of schools; and in England, of all countries which have attained a high degree of wealth and power in modern times, the government has perhaps done the least, though perhaps in no country have benevolent individuals and associations of individuals contributed so largely to the establishment of permanent places of education. England is also the country in which there are most schools kept by individuals for the object of private profit.

It is impossible to consider a state well organised which shall not, to some degree and in some manner, superintend all places for education. It is equally impossible to view education as well organised in a state, if all competition shall be excluded from the system; and in fact there is no country, not even those in which education is most directly made a branch of administration, in which some competition of some kind does not exist. In fact, if it does not exist in some form and in some degree, there will be no efficient instruction.

The general consideration of this subject is contained in the article EDUCATION.

SCHOOLS, ENDOWED. An Endowed School in England is a school which was established and is supported by funds given and appropriated to the perpetual use of such school, either by the king or by private individuals. The endowment provides salaries for the master and usher, if there is one, and gratuitous instruction to pupils, either generally or the children of persons who live within certain defined limits. Endowed schools may be divided, with respect to the objects of the founder, into grammar-schools, and schools not grammar-schools. A grammar-school is generally defined to be a school in which the learned languages

the Latin and the Greek, are taught. Endowed schools may also be divided, with respect to their constitution for the purposes of government, into schools incorporated and schools not incorporated. Incorporated schools belong to the class of corporations called eleemosynary, which comprehends colleges and halls, and chartered hospitals or almshouses. [COLLEGE].

Endowed schools are comprehended under the general legal name of Charities, as that word is used in the act of the 43rd of Elizabeth, chap. 4, which is entitled, 'An Act to redress the Misemployment of Lands, Goods, and Stocks of Money heretofore given to Charitable Uses.' Incorporated schools have generally been founded by the authority of letters patent from the crown, but in some cases by act of parliament. The usual course of proceeding has been for the person who intended to give property for the foundation of a school, to apply to the crown for a licence. The licence is given in the form of letters patent, which empower the person to found such a school, and to make, or to empower others to make, rules and regulations for its government, provided they are not at variance with the terms of the patent. The patent also incorporates certain persons and their successors, who are named or referred to in it, as the governors of the school. This was the form of foundation in the case of Harrow School, which was founded by John Lyon, in the fourteenth year of Elizabeth, pursuant to letters patent from the queen. Sometimes the master and usher are made members of the corporation, or the master only; and in the instance of Berkhamstead School, which was founded by act of parliament (2 & 3 Edw. VI., reciting certain letters patent of Henry VIII.), the corporation consists of the master and usher only, of whom the master is appointed by the crown, and the usher is appointed by the master. Lands and other property of such a school are vested in the corporation, whose duty it is to apply them, pursuant to the terms of the donation, in supporting the school. *Many school endowments are of a mixed nature, the funds being appropriated both*

to the support of a free-school and other charitable purposes. These of purposes are very various; but even then the union or connection of an hospital or almshouse with a free-school one of the most common.

Where there is no charter of incorporation, which is the case in a great number of school endowments, the lands and other property of the school are vested in trustees, whose duties, as to the application of the funds, are the same as the case of an incorporated school. It is necessary from time to time for the trustees to add to their numbers by a legal modes of conveyance as shall be the school property in them and the trustees jointly. These conveyances sometimes cause a considerable expense; when they have been neglected, and estates have consequently become vested in the heir-at-law of the surviving trustee some difficulty is occasionally experienced in finding out the person in whom school estates have thus become vested. When the school property consists of money, the same kind of difficulty arises and money is also more liable to be lost than land.

Every charity, and schools amongst the rest, seems to be subject to visitation. I shall first speak of incorporated schools.

The founder may make the persons whom he gives the school property, trust also the governors of his foundation for all purposes; and if he names no special visitor, it appears that such persons will be visitors as well as trustees. If he names a person as visitor, such person is called a special visitor; and it is a general rule that if the founder names a special visitor, and does not constitute governors of his foundation the visitor is the heir-at-law of the founder; if he names no visitor, the crown will visit by the lord keeper the great seal. The king is visitor of schools founded by himself or his ancestors. The duties of trustees and visitors are quite distinct, whether the same persons are trustees and visitors, or the trustees and visitors are different. It is the duty of trustees to preserve the school property, and to apply it to the purposes intended by the founder. In respect

net, trustees are subject to the use of the Court of Chancery, other trustees; and of course they are liable for all misapplication of it. It is the visitor's duty to inquire into the behaviour of the master or in their respective offices, and the general conduct of the school. Judge according to the founder's wish he cannot alter unless he is not by the terms of the donation.

There seems to be no reason why that the king, in respect of endowments, has any further power over persons, and consequently he alters the terms of the donation, his power was originally reserved under and his successors; but on other there may be some difference of opinion. The visitor, or those whoitorial power, can alone remove a or usher of an endowed school. The Court of Chancery never removes a or usher, when they are part of estate body, on the general principle that this court has no power to a corporation of any kind; and where is a visitor, or persons with power, the Court never attempts to remove a master or usher, they are not members of the corporation. (17 Ves. 441. *Gen. v. the Earl of Arundel*.)

Trustees of endowed schools which are incorporated are accountable in a Court of equity for the management of all property. But the internal management of the school still belongs to the visitor, if there is one; and if there is no special visitor it belongs to the donor's heir. Trustees of endowed schools are not such, as merely the use of the property, as already stated; and it is their duty to take care to apply the income according to the founder's intention. It has, however, been held that in schools not incorporated the jurisdiction of the Court of Chancery and the visitorial jurisdiction are kept quite distinct; and in cases in which it has been difficult to determine what ought to be the proper mode of proceeding.

A grammar-school is an endowment teaching the learned languages,

or Greek and Latin, and for no other purpose, unless the founder has prescribed other things to be taught besides grammar. This legal meaning of the term grammar-school has been fixed by various judicial decisions, and it appears to be established that, if the founder merely expresses his intention to found a grammar-school, the school must be a school for teaching Latin and Greek only, at least, so far as the teaching is gratuitous; other branches of instruction may be introduced, but the scholars must pay for this extra instruction. If it should happen that the endowment has, for a long time, been perverted from its proper purpose, this will not prevent the Court of Chancery from declaring a school originally designed for a grammar-school to be still a grammar-school, and it will give the proper directions for carrying into effect the founder's intentions, whatever may be the length of time during which they have been disregarded. This was the case with the grammar-school of Highgate, in the county of Middlesex, which was founded by Sir Roger Cholmeley, under letters patent of Queen Elizabeth, under the title of the Free Grammar-school of Roger Cholmeley, Knight. The statutes were made in 1571, by the wardens and governors, with the consent of the Bishop of London, under the authority of the letters patent. The first statute ordered that the schoolmaster should be a graduate, and should teach young children their A, B, C, and other English books, and to write, and also in their grammar as they should grow up thereto. An information which was filed against the governors, charged that the school had been converted from a free grammar-school into a mere charity school, and that the governors had, in other ways, abused their trust. The facts of the abuse were established, but it was shown that, so far back as living memory could go, the school had been merely a place of instruction in English, writing, and arithmetic; and also that, in other respects, the statutes had not been observed as far back as the year 1545. Notwithstanding this, it was declared by the Chancellor (Eldon) that this was a school originally intended for the purpose of

teaching grammar, and a decree was made for restoring the school according to the intention of the founder. But it appears from the first statute that the school was also intended to be an English school.

As to teaching something besides Latin and Greek in an endowed school, Lord Eldon observes (*Att.-Gen. v. Hartley*, 2 J. & W., 378), "if there was an antient free grammar-school, and if at all times something more had been taught in it than merely the elements of the learned languages, that usage might engraft upon the institution a right to have a construction put upon the endowment different from what would have been put upon it if a different usage had obtained." When the founder has only intended to establish a grammar-school, and has applied all the funds to that purpose, none of them can be properly applied to any other purpose, such as teaching the modern languages or other branches of knowledge. When the funds of a school have increased so as to be more than sufficient for the objects contemplated by the founder, the Court of Chancery will direct a distribution of the increased funds, but it will still apply the funds to objects of the same kind as those for which the founder gave his property. If then a founder has given his property solely for the support of a grammar-school, it is inconsistent with his intention to apply any part of the funds to other purposes, such for instance as paying a master for teaching writing and arithmetic; and yet this has been done by the Court of Chancery in the case of Monmouth school (3 Russ., 530) and in other cases. The foundation of Monmouth school consists of an almshouse, a free grammar-school for the education of boys in the Latin tongue, and other more polite literature and erudition, and a preacher. The letters patent declared that "all issues and revenues of lands to be given and assigned for the maintenance of the almshouse, school, and preacher, should be expended in the sustentation and maintenance of the poor people of the almshouse, of the master and under-master of the school, and of the preacher, and in repairs of the lands and possessions of the charity." Not-

withstanding this, the Court of Chancery appointed a writing-master, at a salary 60*l.* per annum, to be paid out of the issues and revenues; and thus it took away 60*l.* per annum from those to whom the founder had given it. This was done on the authority of a case in the year 1797, which was itself a bad precedent.

Lord Eldon's decision in the case of Market Bosworth school (*Att.-Gen. Dixie*, 3 Russ., 534) established an us in the school, whose sole occupation was to be to instruct the scholars in English writing, and arithmetic, and it gave usher a salary of 90*l.* per annum out of the school funds. But in doing this Lord Eldon merely did what the donor intended. Market Bosworth is one of the grammar-schools in which the founder has directed that other things should be taught besides Latin and Greek. According to the statutes, the school was to be divided into two branches, the lower school and the upper; and "in the form of the lower school shall be taught the A, B, C, Primer, Testament, and of English books." In the upper school instruction was confined to Latin, Greek and Hebrew. It is therefore in this case as clear that the founder's intention was carried into effect by the decree of court, as it is clear that in the case of Monmouth school such intention was violated. The case of Monmouth school however, furnished a precedent, which has been followed in other cases.

There are many grammar-schools in which nothing is provided for or nothing intended by the founder except instruction in grammar, which, as the term is then understood, appears to have meant only the Latin and Greek languages, sometimes only Latin perhaps. Where provision is made for other instruction in addition to, or rather as preparatory to, the grammar instruction, modern expression like those already mentioned in the case of Highgate and Market Bosworth schools have been used by the founder or the makers of the statutes. In the founder's rules for the grammar school of Manchester, which has now income of above 4000*l.* per annum, it is said, "The high-master for the time being shall always appoint one of his school

takehold least, to instruct and teach one end of the school all infants all come there to learn their Primer, and write, till they being over," &c. In all cases of grammar-schools where this instruction is to be, it was evidently intended as a *bona fide* end, not as a substitute *nomine*. It was therefore clearly so in the case of the Highgate school, converted it into a mere *bona fide* end, not as a substitute *nomine*. It was therefore clearly so in the case of the Highgate school, converted it into a mere *bona fide* end, not as a substitute *nomine*. It was therefore clearly so in the case of the Highgate school, converted it into a mere *bona fide* end, not as a substitute *nomine*.

They are so admitted about the year seven. Grammar-schools have now for a long time been regulated by the Court of Chancery, which, though affecting to deal with them in respect of the application of the trust, has in fact gone much further. It may be applied to for the purpose of establishing a school where funds are given for the purpose, but the trust is affected without the aid of the court. It may also be applied to purposes of carrying a misapplication of the funds. The court may also do so in order to sanction the application of the school funds when they exceed beyond the amount for the purposes indicated by the

Such surplus funds are often in establishing exhibitions or bursaries to be paid to meritorious or have been situated at the time of their residence at colleges. The scheme for the regulation of the school in Kent, which was approved by the Court of Chancery, and entered into the records of 1801, did not extend to any college of the University of Cambridge, and payable out of the school's endowment. It also could benefit of the school beyond what was intended by the founder, and made

various other regulations for the improvement of the school, having regard to the then annual state of the school estates.

When the application has been approved, the schemes sanctioned by the Court of Chancery may generally be considered as aiming at least to carry the founder's intention into effect, and as calculated on the whole to benefit the school. But in some cases decrees have been obtained by collusion among all the parties to the suit, against which it is no security that the attorney-general is a necessary party to all bills and informations about charities. The founder of a school and hospital in one of the midland counties, among other things, appointed that "the schoolmaster should be a single person, a graduate in one of the universities of Oxford or Cambridge," &c.; and he did "further will that if any schoolmaster was to be chosen should marry or take any woman to wife, or take upon him any care of souls, or preach any constant lecture, then in every of the said cases he should be disabled to keep or continue the said school." The trustees disagreed with these restrictions and qualifications, but afterwards finding that they could not do this, they applied to the Court of Chancery: and the court ordered, among other things, that a clergyman should be the head master, though the founder did not intend to exclude laymen; and that the head master was not to be restricted from marrying or taking upon him the care of souls, &c. This mode of dealing with a founder's rules has not much appearance of an attempt to carry them into effect.

This clause about marrying occurs in the rules of several grammar-schools, for instance in those of Harrow school. The rule may be wise or unwise; but it was once observed, and it might be observed still, until it is altered by the proper authority.

It appears from the rules of many grammar-schools that religious instruction according to the principles of the Church of England, as established at the Reformation, is a part of the instruction which the founder contemplated; and when nothing is said about religious instruction, it is probable that it was always the practice to give such instruction.

grammar-schools. That it was part of the discipline of such schools before the Reformation cannot be doubted, and there is no reason why it should have ceased to be so after the Reformation, as will presently appear. It is generally asserted that in every grammar-school religious instruction ought to be given, and according to the tenets of the Church of England; and that no person can undertake the office of schoolmaster in a grammar-school without the licence of the ordinary. This latter question was argued in the case of *Rex v. the Archbishop of York*. (6 *T. R.*, 490.) A mandamus was directed to the archbishop directing him to license R. W. to teach in the grammar-school at Skipton, in the county of York. The return of the archbishop was that the licensing of schoolmasters belongs to the archbishops and bishops of England; that R. W. had refused to be examined; and he relied as well on the ancient canon law as upon the canons confirmed in 1603 by James I. (*The Constitutions and Canons Ecclesiastical*, 'Schoolmaster,' 77, 78, 79.) The return was allowed, and consequently it was determined that the ordinary has power to license all schoolmasters, and not merely masters of grammar-schools. As to schoolmasters generally, the practice is discontinued, and probably it is not always observed in the case of masters of grammar-schools.

The form of the ordinary's licence is as follows:—"We give and grant to you, A. B., in whose fidelity, learning, good conscience, moral probity, sincerity, and diligence in religion we do fully confide, our licence or faculty to perform the office of master of the grammar-school at H., in the county, &c., to which you have been duly elected, to instruct, teach, and inform boys in grammar and other useful and honest learning and knowledge in the said school allowed of and established by the laws and statutes of this realm, you having first sworn in our presence on the Holy Evangelists to renounce, oppose, and reject all and all manner of foreign jurisdiction, power, authority, and superiority, and to bear faith and true allegiance to her majesty Queen Victoria, &c., and subscribed to

the thirty-nine articles of religion of United Church of England and Ireland and to the three articles of the sixth canon of 1603, and to all the contained in them, and having before us subscribed a declaration of your conformity to the Liturgy of United Church of England and Ireland as is now by law established. In testimony, &c.

From this licence it appears that master of every school who is licensed the ordinary must be a member of Church of England, and must take oath and make the subscriptions and declarations which are recited in licence.

It is a common notion that the master of a grammar-school must be a graduate of Oxford or Cambridge, and in orders; and such is the present practice. But it is by no means always the case that the rules of endowed schools require the master to be in holy orders. The founders seem generally to have considered this a matter of indifference, but many of them provided that the master was in orders, or took orders should not at least encumber himself with the cure of souls. The principle clearly was, that the master of a grammar-school should devote himself to that work, and it was a good principle. The Court of Chancery has in various cases ordered that the master should be a clergyman, where the founder has so ordered. Dean Colet, the founder of St. Paul's School, London, ordered in his statutes, that neither of the masters of that school, if in orders, nor the laymen, shall have any benefice with cure of souls which may hinder the business of the school. He appointed a chaplain to the school, thereby appearing to think that the religious instruction should be given by the masters of grammar-schools, and that if they were not, it would be fully employed otherwise.

It has sometimes been doubted whether a master of a grammar-school could hold ecclesiastical preferment with it. The founder has not forbidden this, though no rule of law which prevents him from holding the two offices can cause him to neglect the duties of either. The remedy is just the same as if

acted either of his offices for any other cause.

Many grammar-schools are only free to the children of a particular parish, or of some particular parishes; but this privilege has occasionally been extended to a greater surface, as in the case of Tunbridge school. Some are free to all persons, which is the case with one of King Edward VI.'s endowments. Sometimes the number of free boys is limited, but the master is allowed to take in scholars, either by usage or by the founder's rules. At present the practice

for masters of grammar-schools to take boarders if they choose, but in some cases the number is limited. Abuses undoubtedly have arisen from the practice of the master taking boarders, and the children of the parish or township for which the school was intended have been neglected or led to quit the school sometimes in consequence of the head master being solely intent on having a profitable boarding school. But in most cases a school has benefited by the master taking boarders; and this has frequently been the only means by which the school has been able to maintain itself as a grammar-school. When the situation has been in a good one, an able master has often been found willing to take a grammar-school with a house, and a small salary attached to it, in the hope of making up competent income by boarders. As this can only be effected by the master's care and diligence in teaching, a small neighbourhood has thus frequently enjoyed the advantage of its grammar-school, which otherwise would have been lost.

There has never been any general superintendence exercised over the endowed schools of this country. The Court of Chancery only interferes when its jurisdiction is applied to, and then only to a certain extent; and visitors are only appointed for particular endowments; they are often ignorant of their powers, and rarely exercise them. As many of these places have only small endowments, are situated in obscure parts, and the property vested in unincorporated trustees, who are ignorant of their powers, and sometimes careless about it,

we may easily conceive that these schools would be liable to suffer from fraud and neglect, both of trustees and masters; and this has been the case. The object of the statute of Elizabeth was to redress abuses in the management of charities generally; but a great many endowments for education were excepted from the operation of that statute, which indeed seems not to have had much effect, and it soon fell nearly into disuse. Applications for the redress of abuses have, from time to time, been continually making to the Court of Chancery, and Berkhamstead school has now, for a full century, been before the court. In many cases the governors of schools have obtained Acts of Parliament to enable them better to administer the funds. This was done in the case of Macclesfield school by an Act of the year 1774, and another for the same school has recently been obtained. An Act of Parliament was also obtained in 1831 for the free-school of Birmingham, the property of which had at that time increased considerably in value, and is still increasing. Both these schools were foundations of Edward VI., and were endowed with the property of suppressed religious foundations.

The condition of the endowments for education in England may now be collected from the Reports of the Commissioners for Inquiry into Charities. In 1818 commissioners were appointed under the great seal, pursuant to an Act passed in the 58th year of the reign of George III., entitled "An Act for appointing Commissioners to inquire concerning Charities in England for the Education of the Poor." A great many places were excepted from the operation of this Act. The commission was continued and renewed under various Acts of Parliament, the last of which (5 & 6 Wm. IV. c. 71) was entitled "An Act for appointing Commissioners to continue the Inquiries concerning Charities in England and Wales until the 1st day of August, 1837." All the exceptions contained in the first Act were not retained in the last; but the last Act excepted the following places from inquiry: "The universities of Oxford and Cambridge, and the colleges

and halls within the same; all schools and endowments of which such universities, colleges, or halls are trustees; the colleges of Westminster, Eton, and Winchester; the Charter House; the schools of Harrow and Rugby; the Corporation of the Trinity House of Deptford Strond; cathedral and collegiate churches within England and Wales; funds applicable to the benefit of the Jews, Quakers, or Roman Catholics, and which are under the superintendence and control of persons of such persuasions respectively." Under the last Act the Commissioners completed their inquiries into endowments for education and other charities, with the exceptions above specified. The Reports of the Commissioners contain an account of the origin and endowment of each school which was open to their inquiry, and also an account of its condition at the time of the inquiry. The Reports are very bulky and voluminous, and consequently cannot be used by any person for the purpose of obtaining a general view of the state of these endowments; but for any particular endowment they may be consulted as being the best, and in many cases the only accessible sources of information.

The number of grammar-schools reported on by the Commissioners is 700; the number of endowed schools not classical, 2150; and of charities for education not attached to endowed schools, 3390. The income of grammar-schools reported on is 152,047*l.* 14*s.* 1*d.*; of endowed schools (not classical), 141,385*l.* 2*s.* 6*d.*; and of the other charities given for or applied to education, 19,112*l.* 8*s.* 8*d.*

The previous remarks on grammar-schools must be taken subject to the provisions contained in a recent Act of Parliament, which is the only attempt that has been made by the legislature to regulate schools of this class. This Act (3 & 4 Vic. c. 77) is entitled "An Act for improving the Condition and extending the Benefits of Grammar-Schools." The Act recites, among other things, that the "patrons, visitors, and governors of such grammar-schools are generally unable of their own authority to establish any other system of education than is expressly provided for by the foundation, and her majesty's courts of law and

equity are frequently unable to give adequate relief, and in no case but at considerable expense." The Act then declares that the courts of equity shall have power, as in the Act provided, "to make such decrees or orders as to the said courts shall seem expedient, as well to extending the system of education to other useful branches of literature as science, in addition to or (subject to the provisions thereafter contained) in lieu of the Greek and Latin languages, and such other instruction as may be required by the terms of the foundation or the then existing statutes, as also for extending or restricting the freedom or the right of admission to such school, by determining the number or the qualifications of boys who may thereafter be admissible thereto as free scholars, otherwise, and for settling the terms of admission to and continuance in the same, and to establish such schemes for the application of the revenues of any such schools as may in the opinion of the court be conducive to the rendering, maintaining such schools in the greatest degree efficient and useful, with due regard to the intentions of the respective founders and benefactors, and to decide at what period, and upon what terms such decrees or orders, or any directions contained therein, shall be brought into operation; and that such decrees or orders shall have force and effect, notwithstanding any provisions contained in the instruments of foundation, endowment, or benefaction, or in the then existing statutes;" but it is provided, that if there shall be any special visitor appointed by the founder or other competent authority, he shall be heard in the matters in question before the court makes any orders or decrees.

This enactment extends the power the court over grammar-schools very considerably, as will appear from what has been said; not so much however, we view what the court has done, as we take the declarations of the most eminent equity judges as to what the court can do. The power however of changing a grammar-school into one not a grammar-school, which is given by this Act is a considerable extension of authority

the power is limited to cases (§ 8) where the necessity of such a change arises from insufficiency of the revenues of a grammar-school for the purpose of the school, that this provision, as it is properly been remarked, will be of very difficult application; for in many successful grammar-schools the revenue is small, and in some which are not successful it is large. Smallness of revenue, therefore, will not of itself prove "insufficiency of revenues" in the sense intended by the Act. The same section contains also a provision, that except in this case of insufficient revenues, the court shall (by this Act be authorised to dispense with any statute or provision now existing, so far as relates to the qualification of any schoolmaster or under-master, or dispensing power then which the Act has often assumed, as shown in the instances above mentioned, remains the same; that is, it does not exist at all. When a grammar-school shall have been made into another kind of school by the provisions of this Act, it is to be considered a grammar-school, and subject to the jurisdiction of the ordinary as heretofore.

In case there shall be in any city, town, place, any grammar-school or grammar-schools with insufficient revenues, they may be united, with the consent of the donor, patron, and governor of every school to be effected thereby. The legal meaning of city and town (township) is strictly precise, but "place" has no real meaning, and the framers of the Act have forgotten to give it one in their section, which treats of the construction of terms in that Act.

The court is also empowered (§ 14) to enlarge the powers of those who have authority by way of visitation or otherwise in respect of the discipline of any grammar-school; and where no authority by way of visitation is vested in any person, the bishop of the diocese may apply to the Court of Chancery, that the facts, and the court may, if it think fit, give the bishop liberty to visit and regulate the said school in respect of the discipline, but not otherwise, as provision, for various reasons, will be completely imperative.

The Act gives a summary remedy against masters who hold the premises of any grammar-school after diemical, or after ceasing to be masters. Such masters are to be turned out in like manner as is provided in the case of other persons holding over, by the Act of the first and second of Victoria, entitled "An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy."

All applications to the court under this Act may be (not *must*) made by petition only, and such petitions are to be presented, heard, and determined according to the provisions of the 52 Geo. III. c. 101.

The Act saves the rights of the ordinary. It is also declared not to extend "to the universities of Oxford or Cambridge, or to any college or hall within the same, or to the university of London, or any colleges connected therewith, or to the university of Durham, or to the colleges of St. David's or St. Bees, or the grammar-schools of Westminster, Eton, Winchester, Harrow, Charter-House, Rugby, Merchant Tailors', St. Paul's, Christ's Hospital, Birmingham, Manchester, or Macclesfield, or Louth, or such schools as form part of any cathedral or collegiate church." But the exemption does not extend to the grammar-schools of which the universities of Oxford or Cambridge, or the colleges and halls within the same, are trustees, though these schools were excepted from the Commissioners' inquiry by the 5 & 6 Wm. IV. c. 71.

Endowments for Education are probably nearly as old as endowments for the support of the church. Before the Reformation there were schools connected with many religious foundations, and there were also many private endowments for education. Perhaps one of the oldest schools of which anything is known is the school of Canterbury. Theodore, who was consecrated archbishop of Canterbury in 602 (according to some authorities), founded a school or college by license from the pope. This school certainly existed for a long time; and there is a record of a suit before the Archbishop of Canterbury in 1521, between the rectors

of the grammar-schools of the city (supposed to be Theodore's school or its representative) and the rector of St. Martin's, who kept a school in right of the church. The object of the suit was to limit the rector of St. Martin's in the number of his scholars. This school probably existed till the Reformation, at least this is the time when the present King's school of Canterbury was established by Henry VIII., and probably on the ruins of the old school. Before the Reformation schools were also connected with chantries, and it was the duty of the priest to teach the children grammar and singing. There are still various indications of this connection between schools and religious foundations in the fact that some schools are still, or were till lately, kept in the church, or in a building which was part of it. There are many schools still in existence which were founded before the Reformation, but a very great number were founded immediately after that event, and one professed object of king Edward VI. in dissolving the chantries and other religious foundations then existing was for the purpose of establishing grammar-schools, as appears from the recital of the Act for that purpose (1 Ed. VI. c. 14). [CHANTRY.]

Though the Act was much abused, the king did found a considerable number of schools, now commonly called King Edward's Schools, out of tithes that formerly belonged to religious houses or chantry lands; and many of these schools, owing to the improved value of their property, are now among the richest foundations of the kind in England. In these, as in many other grammar-schools, a certain number of persons were incorporated as trustees and governors, and provision was made for a master and usher. At that time the endowments varied in annual value from twenty to thirty and forty pounds per annum.

A large proportion of the grammar-schools were founded in the reigns of Edward VI. and Elizabeth, and there is no doubt that the desire to give complete ascendancy to the tenets of the Reformed Church was a motive which weighed strongly with many of the founders. Since the reign of Elizabeth we find

grammar-schools occasionally established but less frequently, while endowments to schools not grammar-schools have gradually increased so as to be much more numerous than the old schools. Foundations of the latter kind are still made by the bounty of individuals from time to time; and a recent Act of Parliament (2 & 3 Wm. IV. c. 115) has made it lawful to give money by will for the establishing of Roman Catholic schools. The statute of the 9th Geo. II. c. 36, commonly called the Mortmain Act, has placed certain restrictions on gifts by will for charitable purposes, which restrictions consequently extend to donations by will for the establishment or support of schools. [MORTMAIN.]

The history of our grammar-schools before the Reformation would be a large part of the history of education in England, for up to that time there were probably no other schools. From the time of the Reformation, and particularly within the last half-century, the grammar-schools of England were the chief places of early instruction for all those who received a liberal training. From these often humble and unpretending offices has issued a series of names illustrious in the annals of their country—succession of men, often of obscure parentage and stinted means, who have justified the wisdom of the founders of grammar-schools in providing education for those who would otherwise have been without it, and thus securing to the state the services of the best of her children. Though circumstances are now greatly changed, there is nothing in the present condition of the country which renders prudent to alter the foundation of the schools to any great extent; and certainly there is every reason for supporting them in all the integrity of the revenues, and for labouring to make them as efficient as their means will allow. The conflict of parties who are dissatisfied about education, but in fact rather contending for other things—in the exception of private schools, which from their nature must be conducted by the proprietor with a view to a temporary purpose and in the attempt made to form proprietary establishments which shall be

the advantages of grammar-schools, private schools, and shall not labour over the defects of either—we see no new elements on which to rest our hopes of a sound education being secured for the youth of the middle and upper classes of this country. The old grammar-schools, on the whole, possess a better organization than anything that has been attempted, and though circumstances demand changes in many of them, they require no changes which shall essentially alter their character. In the present state of affairs, these are specially schools for the middle classes who cling to the Established Church, and it is in their interest to cherish and support them. Digests of the whole body of Reports made by the Commissioners for Inquiry into Charities have been prepared and printed in both Houses of Parliament (1837). Two of these volumes, folios of 427 pages and 829 pages respectively, contain an Analytical Digest, are arranged according to the alphabetical order of every county in England, in North Wales, and in South Wales; and under the head of every city and parish each county are given the following particulars (the cities and parishes are arranged in alphabetical order):—The name of the charity or donor; for what purpose each charity is applicable; the quantity of land and number of houses; the rent paid for the same; the amount of unimprovable rents and rent-charges; the amount of land-tax, if any, deducted therefrom; the amount of personal property, distinguishing money in funds, on mortgage, or on personal or real security, or to be applied by way of loan, with or without interest; the income of each charity; and a collection of observations.

The first volume of the Analytical Digest contains a reference to the volume and page of each Report. Each ecclesiastical presentation as mentioned in the Reports are noticed in the Digest at the end of each county. The Digest concludes with a similar arrangement of those which are reported on by the Commissioners under the head of General Charities.

The second part of the Return (a folio

of 691 pages) contains a more particular Digest of all schools and charities for Education. It is divided into three parts: the first relating to Grammar-schools, viz., in which Greek or Latin is required to be, or is in fact, taught; secondly, Schools not Classical; and thirdly, Charities for Education not attached to Endowed Schools, which include donations for the support of Sunday-schools.

A good deal has been written on the subject of endowments for education from time to time. There are several articles on endowed schools in the 'Journal of Education,' and an article on endowments in England for the purposes of Education, in the second volume of the publications of the Central Society of Education, by George Long. The evidence before the select committee of the House of Commons in 1835, contains much valuable information. In 1840 a sensible pamphlet on grammar-schools appeared in the form of a letter to Sir R. H. Inglis, by the Honourable Daniel Finch, for twenty years a charity commissioner. We are indebted to this letter for several facts and suggestions.

SCIRE FACIAS, a writ sued out for the purpose either of enforcing the execution of, or of vacating, some already existing record. It directs the sheriff to give notice ("Scire facias," whence the name) to the party against whom it is obtained to appear and show cause why the purpose of it shall not be effected. A summons to this effect should be served on the party, whose duty then is to enter an appearance, after which a declaration is delivered to him, reciting the writ of scire facias. To this he may plead, or demur, and the subsequent proceedings are analogous to, and in fact are in law considered as an action. If the party cannot be summoned, or fail to appear, judgment may be signed against him. The proceedings under a scire facias are resorted to in a variety of cases. They may be divided into—

1. Those where, the parties remaining the same, a scire facias is necessary to revive or set in operation the record.

2. Those where another party seeks to take the benefit of it, or becomes chargeable, or is injured, by it.

In cases where a year and a day have elapsed since judgment has been signed, and nothing (such as a writ of error, an injunction, &c.) has existed to stay further proceedings, it is a legal presumption that the judgment has either been executed, or that the plaintiff has released the execution. In such case execution cannot issue against the defendant until he has had an opportunity, by means of the notice given him under a scire facias, of appearing and showing any cause which may exist why execution should not issue against him. If the judgment has been signed more than ten years, a scire facias cannot issue unless with the permission of the court or a judge; and by the statute 3 & 4 Wm. IV. c. 27, § 40, proceedings appear to be limited to a period of twenty years. When a plaintiff, having had execution by elegit, under which he obtains possession of a moiety of the rents and profits of the defendant's land, has had the debt satisfied by payment or from the profits of the land, scire facias may be brought to recover the land.

3. The cases of more ordinary occurrence under the second head are those where one of the parties to an action becomes bankrupt, or insolvent, or dies, or, being a female, marries, or where it is sought to enforce the rights of a plaintiff against the bail to an action, or to set aside letters patent. If a woman obtain a judgment, and marry before execution, the husband and wife must sue out a scire facias to have execution. And if judgment is obtained against a woman, and she marries before execution, a scire facias must be brought against her and her husband before execution can be obtained. A scire facias is the only proceeding for the purpose of repealing letters patent by which the king has made a grant injurious to some party, as where he has granted the same thing which he had already granted to another person; or a new market or fair is granted to the prejudice of an antient one, &c. The king may have a scire facias to repeal his own grant, and any subject who is injured by it may petition the king to use his name for its repeal. A man may have a scire facias to recover the money

from a sheriff who has levied under fieri facias and retains the proceeds.

(2 Wms. Saund. 71; Tidd's *Pract. Archbold's Practice*.)

SCOTCH CHURCH. [OF THE
ASSEMBLY OF THE CHURCH OF SCOTLAND.]

SCUTAGE, or ESCUAGE. [FEDERAL SYSTEM, p. 24.]

SEARCH, RIGHT OF. The general principles upon which that part of the Law of Nations is constructed which respects the usages to be observed toward neutral powers in time of war by the belligerent powers, have been explained under the head of BLOCKADE. Here it is only necessary farther to remark that manifestly no other right can be exercised by the belligerent over the ships of the neutral without the right of visitation and search. The existence of that right, accordingly, is admitted on all hands as the rule, whatever may be the limitations or exceptions. As Lord Stowell has said in his judgment on the case of the *Mari* (Garrels v. Kensington, 1 T. R. 202): "Till they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists."

In the exercise of the right of search upon a neutral vessel, the first and principal object of inquiry is generally the ship's papers. These are, the passport from the neutral state to the captain of master; the sea letter, or sea brief, specifying the nature and quantity of the cargo; the proofs of property; the muster-roll of the crew, containing the name, age, rank or quality, place of residence, and place of birth of each of the ship's company; the charter party; the bill of lading; the invoices; the log-book; and the bill of health. (Chitty on the *Law of Nations*, pp. 196-199.)

The penalty for the violent usurpation of the right of visitation and search is the confiscation of the ship and cargo, and a rescue by the crew after the capture is in actual possession is considered the same thing with a forcible prevention. In either case the resisting ship may be seized in the same manner as if it

ed to the enemy, and, being brought to port, will be condemned as prize.

Of course, any of the belligerent powers agree with any of the neutral states the right of search shall only be exercised in certain circumstances; and this is the first limitation that falls to be noted. "Two sovereigns," Lord Stowell said in the same judgment, "may unconditionally agree, if they think fit, as one late instance they have agreed, special covenant, that the presence of their armed ships along with their merchant-ships shall be mutually understood to imply that nothing is to be found but convoy of merchants' ships inconsistent with amity or neutrality; and, if consent to accept this pledge, no party has a right to quarrel with it, more than with any other pledge which they may agree mutually to accept. Surely no sovereign can legally countenance the assumption of such a security by force." The only security known to the Law of Nations upon this subject, independent of all special covenant, is the act of personal visitation and search, not exercised by those who have the interest in making it." Lord Stowell here alludes to the pretensions of the northern powers in their convention for the establishment of what was called an armed neutrality in 1800, one of the clauses of which was, "That the declaration of the powers who shall command the ship of war, or ships of war, of the king or emperor, which shall be convoying one or more merchant-ships, that the convoy has contraband goods on board shall be taken; and that no search of his ship, the other ships of the convoy, shall be admitted." It is sometimes stated that it was also one of the principles of the same convention of the same kind made by the northern powers in 1780.

There may perhaps have been an understanding among the contracting parties that effect; but we do not find it distinctly avowed in any of their published instruments. The position in question, namely, that the presence of a ship of war should protect from search the merchantmen under its convoy, never has been admitted by Great Britain.

It is now universally admitted that the right of visitation and search cannot be exercised upon a ship of war, or public or national vessel, itself; and this is the second limitation of the right. It is strange that there should ever have been any doubt or dispute upon this point. A ship of war has always been looked upon as in a manner part of the national territory, and as such inviolable in any circumstances whatever: the act of entering it in search either of contraband goods or of deserters must be considered as an act of the same character with that of pursuing a smuggler or fugitive across the frontier of the state without permission of the sovereign authority, a thing the right of doing which has never been claimed. Accordingly, although it has been a common thing for nations to declare by express stipulation in their treaties with one another that the prize courts in each shall exercise a jurisdiction according to the recognised principles of public law in questions arising with regard to captures at sea, the language used has always implied that the captures are to be merchant or private vessels: of the concession by one power to another of the right of adjudicating upon its ships of war detained or brought into port not a trace is to be found in any such treaty. Yet an opposite doctrine has been both maintained in argument, and attempted to be carried into effect.

In 1655, when, after the disasters of the war with England that had broken out in the preceding year, the Dutch were reduced to such a state as to make them anxious for peace upon almost any terms, the English government demanded as one of the stipulations of the proposed treaty that all Dutch vessels, both of war and others, should submit to be visited, if thereto required. But, humbled as the Dutch were, they promptly refused to agree to any such stipulation; and the treaty was concluded in 1654 without it. Very soon after this peace, the States General were again led to take the whole subject of the visitation and search of ships at sea into their consideration by the circumstance of one of their men-of-war, convoying a fleet of merchant ships, having been met by an English man-of-war in the Downs, when the merchant-

men were subjected to search. The first question that arose was, whether even such an exercise of the right of search was legal in the presence of the convoy; and upon this question the States determined that "the refusal to let merchantmen be searched could not be persisted in." At the same time, however, they took occasion to make the following declaration:—"That, in conformity with their High Mightinesses' instructions taken in respect to the searching of ships of war, and especially those of September, 1627, November, 1648, and December, 1649, it is thought good, and resolved, that all captains and other sea officers that are in the service of this state, or cruising on commission, shall be anew strictly commanded, told, and charged that they shall not condescend to no commands of any foreigners at sea, much less obey the same; neither shall they any ways permit that they be searched; nor deliver, nor suffer to be taken out of their ships, any people or other things." From this time for more than a century and a half, the principle of the immunity of ships of war from visitation and search was acquiesced in by the practice of our own and of every other country, nor is it known to have been contested even in speculation. But at length, in the course of the controversy that arose respecting the rights of neutrals out of the Berlin and Milan decrees of the French emperor and our own Orders in Council, in 1806 and 1807 [BLOCKADE], while some extreme partisans on the one side contended that even merchant ships were not liable to search when under the convoy of a man-of-war, others on the opposite side revived the old pretension of the English republican government of 1653, and maintained our right of visiting and searching the ships of war themselves of neutral states whenever we should think proper. The practical application of the principle that was now especially called for was the visitation of the ships of war of the United States of America for the purpose of recovering seamen alleged to be subjects of this country and deserters from the British service. The pretension thus set up was ably discussed, and its unwarrantable character clearly demon-

strated, in an article published in the 'Edinburgh Review' for October pp. 9-22; but before this paper as an actual enforcement of the new had occurred in an attack made, 23rd of June, by the British ship *Leopard*, upon the American *Chesapeake*, lying off the *Cape of Virginia*. On the refusal of the American captain to permit his ship to be searched, the *Leopard* fired into the *Chesapeake*, which, being unprepared for action, immediately struck her flag. Four persons were carried off, and the American was then left. A late American has, not in too strong language, described this act as "an exertion of power was beyond all patient endurance which electrified the nation to its extremities" (Tucker's *Life of Jefferson*, ii. 258). President Jefferson immediately issued a proclamation interdicting armed British vessels from the harbours and waters of the United States, forbidding all supplies to them, and forbidding intercourse with them. The American minister in London was also demanded satisfaction of the British government. The conduct of the captain of the *Leopard* was not attempted to be defended by the ministry here; on the contrary, its illegality was admitted, at least by implication; Mr. Canning, then Secretary of State for Foreign Affairs, insisted that, inasmuch as the United States had taken no account in the estimate of reparation of retaliation into their own hands, Britain might take those measures in the estimate of reparation; he inquired whether the President's claim would be withdrawn, and king disavowing the act of the *Humphreys* of the *Leopard*, and Admiral Berkeley, his commanding officer who had directed it. The proceeding was justified by the American government as a measure of precaution, not of retaliation. Negotiations continued for a long time with result; the affair of the *Chesapeake* became mixed and complicated by other incidents, giving rise to new and counterclaims; at last the American government took its stand on new objections to the search not only

war but even of merchant vessels for errors; it was not denied that the right of merchantmen was sanctioned by the law of nations, but the exercise of the right was denounced as necessarily staining and fraught with danger, and was urged that it should on that account be dispensed with and abolished.

The end war broke out between the two countries in the summer of 1812; it even that did not settle any of the questions that had arisen between them in connection with the right of search. The treaty of peace signed at Ghent on the 24th of December, 1814, contained no stipulation on that subject, which was supposed to have lost its practical importance for the present by the cessation of the general war which had occasioned all the late difficulties respecting the treatment of neutral states.

The right of visitation and search, however, is by no means necessarily confined to a time of war. Its exercise has always been admitted to be equally allowed by international law in time of peace, though it is not so commonly have then been so frequently thought to be called for. The very essence of the seizure by one country of its vessels serving in the mercantile navy of another, which was one of the main objects of dispute between England and America before the breaking out of naval hostilities in 1812, may arise in time of peace as well as in a time of war, though its importance no doubt is less in the former than in the latter. The chief questions connected with the right of search, the number of which is greatly reduced in a time of general peace, are those relating to the trading rights of neutrals; but even of these some remain. Of late years, however, the right of search has become principally important in reference to the trade in slaves, which has now been declared to be illegal by most of the great maritime powers. The right of visitation and search, however its exercise may be regulated, seems to afford the only means of ascertaining whether or no a vessel has got slaves on board; but it is evident that the power opposed, for whatever reason, to the exercise of that right may, even by declaring the slave trade to be

illegal, refuse to allow that illegality to be made an excuse for the visitation of suspected ships bearing its flag. It is only by express stipulation that the free exercise of the right can be established. England, which has all along been foremost in the attempt to suppress the slave trade, has never objected to the exercise of the right of search for this, or indeed for any other legitimate object; but other nations, jealous of our predominant maritime power, have, not perhaps very unnaturally, been extremely reluctant to concede it in this particular case. Some further remarks on this subject are briefly made under the article SLAVE, SLAVERY, farther on in this work.

SEARCHERS. [BILLS OF MORTALITY.]

SEAWORTHINESS. [SHIPS.]

SECRETARY (French, *Secrétaire*), one entrusted with the secrets of his office or employer; one who writes for another. Its remote origin is the Latin *secretum*. The phrase "notarius secretorum" is applied by Vopiscus (*Div. Aurelianus*, c. 36) to one of the secretaries of the emperor Aurelian. This appellation was of very early use in England: Archbishop Becket, in the reign of Henry II., had his "secretarius;" although the person who conducted the king's correspondence, till the middle of the 13th century, was called his clerk only, probably from the office being held by an ecclesiastic. The first time the title of "secretarius noster" occurs is in the 37th Hen. III., 1253.

SECRETARY OF STATE. The office of secretary of state is one of very ancient date, and the person who fills it has been called variously "the king's chief secretary," "principal secretary," and, after the Restoration, "principal secretary of state." He was in fact the king's private secretary, and had custody of the king's signet. The duties of the office were originally performed by a single person, who had the aid of four clerks. The statute 27 Hen. VIII. c. 11, which regulates the fees to be taken by "the king's clerks of his grace's signet and privy seal," directs that all grants to be passed under any of his majesty's seals shall, before they are so sealed, be brought

and delivered to the king's principal secretary or to one of the clerks of the signet. The division of the office between two persons is said to have occurred at the end of the reign of Henry VIII., but it is probable that the two secretaries were not until long afterwards of equal rank. Thus we find Sir Francis Walsingham, in the time of Queen Elizabeth, addressed as her majesty's principal secretary of state, although Dr. Thomas Wilson was his colleague in the office. Clarendon, when describing the chief ministers at the beginning of the reign of Charles I., mentions the two secretaries of state, "who were not in those days officers of that magnitude they have been since; being only to make dispatches upon the conclusion of councils, not to govern or preside in those councils." Nevertheless the principal secretary of state must, by his immediate and constant access to the king, have been always a person of great influence in the state. The statute 31 Hen. VIII. c. 10, gives the king's chief secretary, if he is a baron or a bishop, place above all peers of the same degree; and it enacts that if he is not a peer he shall have a seat reserved for him on the woolsack in parliament; and in the Star Chamber and other conferences of the council, that he shall be placed next to the ten great officers of state named in the statute. He probably was always a member of the privy council. Lord Camden, in his judgment in the case of *Entick v. Carrington* (11 *Hargrave's State Trials*, p. 317), attributes the growth of the secretary of state's importance to his intercourse with ambassadors and the management of all the foreign correspondence of the state, after the policy of having resident ministers in foreign courts was established in Europe. Lord Camden, indeed, denies that he was antiently a privy counsellor.

The number of secretaries of state seems to have varied from time to time: in the reign of George III. there were often only two; but of late years there have been three principal secretaries of state, whose duties are divided into three departments—home affairs, foreign affairs, and the colonies. They are always made members of the privy council and the

cabinet. They are appointed (patent) by mere delivery to the seals of office by the king. Eligible of performing the duties of three departments, and the office far considered as one, that upon removal from one secretarship to another, a member of the Commons does not vacate his seat.

To the Secretary of State for the department belongs the maintenance of the peace within the kingdom, the administration of justice so far as royal prerogative is involved in patents, charters of incorporation, missions of the peace and of pass through his office. He superintends the administration of affairs in

The Secretary for Foreign Affairs conducts the correspondence with states, and negotiates treaties with either through British ministers there, or personally with foreign ministers at this court. He recommends crown ambassadors, ministers, and counsellors to represent Great Britain, and countersigns their warrants.

The Secretary for the Colonies performs for the colonies the same functions that the secretary for the department performs for Great Britain.

Each Secretary of State is assisted by two under-secretaries of state, one by himself; one of whom is permanent, and the other is dependent upon the administration then in power. It is likewise in each department an establishment of clerks appointed by the principal secretary.

The power to commit perjury or treason is incident to the office of principal secretary of state, which, though long exercised, has often been disputed. It is not necessary to give the arguments on both sides, which are discussed with great care in *Lord Camden's* case above cited (*v. Carrington*), which was one of the numerous judicial inquiries into the dispute between the Chief Justice and John Wilks at the beginning of the reign of George III. The conclusions of Lord Camden come are—that the secretary of state is not a magistrate, but a minister of the common law; that the power

or state offenses, which he has ages exercised, was used by immediate delegation from the king, a fact which may be among other things, from the parliament in the time of when Secretary Cook claimed on that ground; that nevertheless of justice must recognise inasmuch as there has been usage of it, supported by three decisions in favour of it since the *viz.*, by Lord Holt, in 1695 (*Endal and Rowe*); by Chief Justice, in 1711 (*Queen v. Derby*); and Hardwicke, in 1734 (*Rex v.*

In a more recent case (*King v. 1798*), Lord Kenyon says, with difficulty in saying that the king has the right to command, he hints that Lord Camden should doubt on the subject. The king has also power to issue by which he may direct letters which are sent through the

This power is occasionally used and was the subject of much in parliament in 1845.

He is also a chief secretary for Ireland in Dublin (except when he is sitting), and he has always been secretary there. He corresponds with one department, and is under the authority of the lord-lieutenant of his office is called that of secretary to the lord-lieutenant; but it is to the office of secretary of state he has sometimes, though very rarely, been a member of the cabinet.

ON (from the Latin *sedition*), that in many of the old English law writers treason is sometimes by the term Sedition; and that proceedings were in Latin, the technical word used in law for treason, till it was superseded by the word *proditio*.

It does not appear to be very ancient. It is stated to comprehend, indecent, or malicious as upon the king or his government whether made in words only, or by tokens (which last comprehend pictures or drawings) to lower him in the

opinion of the subjects or to weaken his government. All these offences fall short of treason; but they are considered crimes at common law, and punishable by fine and imprisonment.

There are also statutes against particular acts of sedition, such as seditious libels. [LAW, CRIMINAL, p. 210, No. 40.]

There are also various acts against societies established for seditious and treasonable purposes, and against seditious meetings and assemblies.

The Roman sense of *Seditio* (*sed* or *se*, and *itio*, a going apart, a separation) is properly a disunion among the citizens, a riot, or turbulent assemblage of people for the purpose of accomplishing some object by violence or causing fear. It was included among other forbidden acts in the *Lex Julia de Majestate*. (Dig. 48, tit. 4.) It is often used in connection with "tumultus" and "turba;" and the three terms seem to have the same signification. (Rein, *Römische Criminalrecht*, p. 522.)

SEDUCTION. [PARENT AND CHILD.]

SEIGNORAGE. [MONEY, p. 350.]

SEIGNORY. [TENURE.]

SEISIN is a term properly applied to estates of freehold only, so that a man is said to be *seised* of an estate of inheritance or for life, and to be *possessed* of a chattel interest, such as a term of years. This distinction does not appear to have existed in the time of Bracton; at least he uses the two words as identical in meaning ('*possessio sive seiscina multiplex est, lib. ii., fol. 38*).

The seisin of the tenant of a freehold is the legal possession of the land. It is actual seisin, called *seisin in deed*, when he has corporeal possession of the land, or, as Bracton expresses it, '*corporalis rei detentio: corporis et animi cum iuris adminiculo concurrente*.' It is seisin in law when lands have descended to a person, but he has not yet actually entered into possession of them, and no person has usurped the possession. When an estate of inheritance is divided into several estates, as for instance an estate for life, and a remainder or reversion in fee, the tenant in possession has the actual seisin of the lands; but the persons in remainder or reversion have also

seisin of their respective estates. The seisin of a rent which issues out of lands is quite distinct from the seisin of the lands; and therefore a disseisin of the estate in the land is not a disseisin of the rent.

In the conveyance of land by feoffment, the delivery of the possession, or livery of seisin, as it is termed, is the efficient part of the conveyance. [FEOFFMENT.]

The word seisin is also applied to the services due from the tenant to the lord. When the lord has received the tenant's oath of fealty, he has obtained seisin of all his services.

Seisin in deed is obtained by actually entering into lands, and an entry into part in the name of the whole is sufficient; by the receipt of rents or profits; and by the actual entry of a lessee to whom the lands are demised by a person who is entitled to but has not obtained actual possession.

Seisin may also be acquired under the Statute of Uses, 27 Hen. VIII., which enacts that when any person shall be seised of any lands to the use, &c. of another, by reason of any bargain, sale, feoffment, &c., the person having the use, &c. shall thenceforth have the lawful seisin, &c. of the lands in the same quality, manner, and form as he had before in the use.

A disseisin supposes a prior seisin in another, and a seisin by the disseisor which terminates such prior seisin. To constitute a disseisin, it was necessary that the disseisor should not have a right of entry; that the disseisee should not voluntarily give up his seisin, and that the disseisor should make himself the tenant of the land; or in other words, should put himself, with respect to the lord, in the same situation as the person disseised. "But," it is well remarked (Co. Litt. 266 b, Butler's note), "how this substitution was effected, it is difficult, perhaps impossible, now to discover. From what we know of the feudal law, it does not appear how a disseisin could be effected without the consent or connivance of the lord; yet we find that the relationship of lord and tenant remained after the disseisin. Thus after the disseisin the lord might release the rent and services to the disseisee; might avow upon him; and if he died, his heir within age, the lord was entitled

to the wardship of the heir." B. The doctrine of disseisin is in many respects very obscure, and at present of practical importance.

SEPARATION A MENSA THORO. [DIVORCE.]

SEPOY, or SIPOY, the name of a native soldier in the East Indies.

Heber derives the word from "si bow and arrow, which were original almost universal use by the natives of India in offensive warfare.

Bhils and Kholees who are employed in the service of the police in protecting gentlemen's house gardens are also called sepoyas, as more propriety, as they still use the bow and arrow. The native soldiers

pay of the British government not a large army, well trained in European discipline: the men are of a size what below that of European soldiers but they are quite as brave, as hard as active, capable of undergoing a fatigue and of sustaining even great exertions. To the attachment and loyalty of this army Great Britain is indebted for the possession of her empire, and it now secures to her sovereignty over a territory vast and extensive than her own, and secured from her by the distance of nearly the globe.

The pay of the Sepoy is two or seven rupees, per month, which double the wages of the class of soldiers from whom they are generally drawn.

The Indian army in 1840, as to the 'East India Calendar,' was as follows:—

Bombay.

- 26 regiments of native infantry.
- 3 regiments of native cavalry.
- 2 regiments of European infantry.
- 1 regiment of artillery.
- 1 corps of engineers.
- 1 corps of invalids.

Madras.

- 52 regiments of native infantry.
- 8 regiments of native cavalry.
- 2 regiments of European infantry.
- 1 regiment of horse artillery.
- 4 regiments of foot artillery.
- 1 corps of engineers.
- 1 corps of invalids.

Bengal.

- 74 regiments of native infantry.
- 10 regiments of native cavalry.
- 2 regiments of European infantry.
- 1 regiment of horse artillery.
- 5 battalions of foot artillery.
- 1 corps of engineers.
- 1 corps of invalids.

Each regiment consists of two battalions of 500 men each. In 1842 the number of native soldiers in the pay of the East India Company was 181,612, besides 4450 native officers, in all 186,062. The number of European soldiers was 19,164, besides 5531 European officers, in all 24,695. The entire Indian army in 1842 consequently amounted to 210,757.

SEQUESTRATION. [BENEFICE, p. 347.]

SEQUESTRATION. [BANKRUPT (SCOTLAND), p. 296.]

SERJEANT, or SERGEANT, is a sub-commissioned officer in a troop of cavalry or in a company of infantry. The duties of serjeants are to drill or instruct in discipline the recruits of a regiment; and on parade they act as markers or guides in the performance of the evolutions. The serjeants of infantry are now armed with muskets like the rest of the troops. In each company, when a battalion is in line, a covering serjeant is always stationed behind the officer commanding the company; when the ranks take open order, and that officer advances before the front rank, the serjeant steps into his place; but upon the ranks being closed, he falls again to the rear. Four or six serjeants are charged with the important duty of guarding the colours of the regiment; they constantly attend the officers who carry them, and are called colour-serjeants. One serjeant in each troop or company is appointed to pay the men; also to keep the accounts relating to their allowances, the state of their necessaries, &c.

The name of *sergens* or *servientes* was, in the armies of France during the reign of Philip Augustus, applied to gentlemen who served on horseback, but were below the rank of knights; and also, as a general term, to the infantry soldiers who were furnished by the towns.

In the reign of Philip and Mary the

serjeant-major of the army was an officer whose post corresponded to that of the modern major-general; and the serjeant-major of a regiment was a field-officer, who would now be designated the major. At present the serjeant-major is an assistant to the adjutant, and keeps the roster for the duties of the serjeants, corporals, and privates. The quartermaster-serjeant is one who acts immediately under the quartermaster of a regiment in all the details relating to the quarters of the officers and men, the supplies of food, clothing, &c.

SERJEANT, or SERGEANT. The word "serjeant" comes to us from "sergent," into which the French had modified the Latin "serviens." The word serjeanty, in French "sergenterie," was formed from "sergent," but was always used with reference to a particular species of service.

In the creation of serjeants, some ancient practices are still retained in those cases where the writ of the serjeant elect issues in term-time; but by statute 6 Geo. IV. c. 95, barristers who receive writs issued in vacation commanding them to appear in the Court of Chancery, and to take upon themselves the estate and dignity of a serjeant-at-law, are, upon appearing before the lord chancellor and taking the oaths usually administered to persons called to that degree and office, declared to be serjeants-at-law sworn, without any further ceremony.

Serjeants at law are the only advocates recognised in the court of Common Pleas. In that court they retain their right of exclusive audience. This privilege extends to trials at bar, but not to trials at nisi prius, either at the assizes or at the sittings in London and Middlesex.

The serjeants formerly occupied three inns, or collegiate buildings, for practice, and for occasional residence, situate in Chancery Lane, Fleet Street, and Holborn. They have now no other building than Serjeants' Inn, Chancery Lane, which has been lately rebuilt. Here all the common-law judges have chambers, in which they dispose in a summary way, and with closed doors, of such matters as the legislature has expressly entrusted to a single judge, and of all business which

is not thought of sufficient magnitude to be brought before more than one judge, or which is supposed to be of a nature too urgent to admit of postponement.

The inn contains, besides accommodations for the judges, chambers for fourteen serjeants, the junior serjeants, while waiting for a vacancy, being dispersed in the different inns of courts.

In Serjeants' Inn Hall the judges and serjeants, as members of the Society of Serjeants' Inn, dine together during term-time. Out of term the hall is or was frequently used as a place for holding the revenue sittings of the court of Exchequer.

A full account of the various kinds of serjeants and of the origin of their functions is given in Manning's '*Serviens ad Legem*.' [BARRISTER.] See also SERJEANT, in '*Penny Cyclopædia*.'

SERJEANTS-AT-ARMS are limited by statute 13 Rich. II. c. 6, to thirty. Their office is to attend the person of the king, to arrest offenders, and to attend the lord high steward when sitting in judgment upon a peer. Two of these serjeants-at-arms, by the king's permission, attend the two houses of parliament. In the House of Commons the office of the serjeant-at-arms (as he is emphatically called) is to keep the doors of the house, and to execute such commands, especially touching the apprehension of any offenders against the privileges of the Commons, as the House, through its Speaker, may enjoin.

In some offices about the royal person the principal officer of the department is distinguished by the appellation of serjeant, as the serjeant-surgeon.

SERJEANTY, GRAND. [GRAND SERJEANTY.]

SERVANT, one who has contracted to serve another. The person whom he has contracted to serve is styled master. Servants are of various kinds: apprentices [APPRENTICE], domestic servants who reside within the house of the master, servants in husbandry, workmen or artificers, and clerks, warehousemen, &c. From the relation of master and servant a variety of rights and duties arise, some of which are founded on the common law, and some on statute.

A contract of hiring and service need

not be in writing unless it be for a longer than a year, or for a year to commence at some future time. If it is not liable to any stamp duty, as it apply to the superior classes of &c. All such contracts imply an undertaking on the part of the servant fully to serve the master, and to do lawful and reasonable commands within the range of the employment contracted for; on the part of the master, to pay the servant and pay him his hire wages. In all hirings where no time is expressed, except those of domestic servants, it is a rule of law that the contract shall continue for a year. In the case of domestic servants it is determinable by a month's warning, or the payment of a month's wages. Servants in husbandry can only be discharged or quit the service upon a quarter's notice. This rule of time may of course be rebutted by circumstances in the contract inconsistent with its existence. In the case of a felony, or any kind of offence amounting to a misdemeanor committed during the time of the service, or of continued neglect, or determined disobedience, a servant may be immediately discharged. If a servant is a domestic, he is nevertheless entitled to wages for the time during which he has served. But in others where the contract is entire for a year, the wages cannot be apportioned, as service having been determined by the expiration of the time contracted in consequence of the fault of the servant, he is not entitled to claim wages for any portion of the time during which he has served. The contract still continues to exist, notwithstanding the disability of the servant to perform his duties, and he is therefore still entitled to receive his wages. The master, however, is not bound to pay the charges incurred by medicine or attendance upon his servant. In case the goods of the master are lost or broken by the carelessness of the servant, the master is not entitled to deduct their value from the wages of the servant, unless there has been a collusion between them to that effect. His remedy is by an action at law against the servant. Where a master becomes bankrupt, the commissioners are not

proof that they are due, to pay six months' wages to his clerks and servants.

The wages for any longer period are not, they must be proved like other debts under the Statute. If a servant has left his service for a considerable time without asking any demand for wages, it will be presumed that they are paid. A master may chastise his apprentice for neglect or misconduct, but he will not be justified in striking any other description of servant. Servants who steal or embezzle their master's goods are subject to a higher degree of punishment than others who commit these crimes. Masters are not compellable to give a character to servants who leave their employment.

They choose to do so, and they give one which is false, they may be liable to an action at the suit of the servant; but in order to recover in such an action, the servant must prove that the character was maliciously given for the purpose of injuring him. If the master, merely for the purpose of confidentially communicating, and *vide* state what he believes to be the truth respecting a servant, he is not responsible for the consequences of a communication.

By a great variety of statutes, the provisions of which are collected and examined in Burn's *Justice*, tit. 'Servants,' special jurisdiction is given to magistrates over servants in husbandry, and also in many classes of manufactures and other employments. None of these laws apply to domestic servants.

As to the subject of them, as relates to servants in husbandry, is to compel persons who are not ostensible means of subsistence enter into service, to regulate the time of mode of their service, to punish negligence and refusal to serve, to determine disputes between masters and servants, to enable servants to recover their wages, and to authorise magistrates under certain circumstances to put an end to the service.

Those statutes which relate to servants in manufactures and other employments prohibit the payment of wages in goods, and provide for their payment in money, and for the regulation of disputes concerning them. They also contain various provisions applicable to the cases of

workmen, &c., absconding, neglecting, or mismanaging their work, injuring or embezzling the materials, tools, &c., entrusted to them, and fraudulently receiving those entrusted to others. With respect also to this class of servants, magistrates have authority to put an end to the contracts of hiring and service. As to combinations of masters or workmen, see COMBINATION LAWS, p. 570.

A master is not guilty of the offence of maintenance, though he maintain and support his servant in an action brought by him against a third party. When a servant is assaulted, his master is justified in assisting his servant, and repelling the assault by force, although he himself be not attacked; and under similar circumstances a servant may justify an assault committed in defence of his master. A master is answerable, both civilly and criminally, for those acts of his servant which are done within the range of his employment. Thus a master is indictable if a servant commit a nuisance by throwing dirt on the highway; and a bookseller or newsvender is liable, criminally as well as civilly, for libels which are sold by his servant in his shop. This liability of the master does not release the servant from his own liability to punishment for the same offence. The servant is also liable when he commits a trespass by the command of his master. A master, although liable civilly for any injuries arising from the negligence or unskilfulness of his servant, is not responsible for the consequences of a wilful act of his servant done without the direction or assent of the master; but the servant alone is liable. Difficulties have sometimes occurred in determining who is responsible in the character of master for damages done to third persons by a servant. The following is an instance:—When a coachman is sent by the owner of horses let out for the purpose of drawing a private carriage, and, while driving the hirer in his private carriage, does some damage to a third party, it has been held that the owner of the horses was liable; for the servant is the servant of the horse owner, and not of him whom he is driving. Where a servant makes a contract within the range of his employ-

ment, what he does will bind his master, just as if he had expressly authorised the servant. But in all cases where there is no express evidence of the delegation of the master's authority, there must be facts from which such delegation can be inferred. Where a servant obtains goods for his master, which the master uses, and he afterwards gives money to the servant to pay for them, the master will be liable to pay for them, though the money should have been embezzled by the servant. If a coachman go in his master's livery to hire horses, which his master afterwards uses, the master will be liable to pay for them, though the coachman has received a large salary for the purpose of providing horses; unless, indeed, that fact were known to the party who let out the horses. If a master is in the habit of paying ready money for articles furnished to his family, and gives money to a servant, on a particular occasion, for the purpose of paying for the articles which he is sent to procure, the master will not be liable to the tradesman if the servant should embezzle the money. If articles furnished to a certain amount have always been paid for in ready money, and a tradesman allows other articles of the same character to be delivered without payment, the master will not be liable, unless the tradesman ascertains that the articles are for the master's own use. Where a tradesman, who had not before been employed by a master, was directed by a servant to do some work, and afterwards did it without any communication with the master, it was held that the master was not liable, though the thing upon which the work was done was the property of the master.

Any person who interferes with the master's right to the services of his servant, does him an injury for which he is responsible in an action for damages. A master may be deprived of the services of a servant, either by some hurt done to a servant, or by his being enticed out of the service. An action, therefore, may be brought by a master where a servant has received some personal injury disqualifying him from the discharge of his duties as a servant, as where he has been disabled by the overturn of a coach, or the

bite of a third person's dog. The action lies by a parent against the seducer of his daughter if of this class. [PARENT'S ACTION.]

An action will not lie against a master for enticing away a servant, if the master has paid to the master the penalty stipulated for by the agreement of hiring service in case of his quitting his service. If a servant has been sent away from the service, an action lies against him for his breach of contract, as well as against the party who has enticed him away.

The statute 32 Geo. III. c. 56, is preventing the counterfeiting of the marks of the characters of servants." dependently of this statute, a person wilfully gives a false character to a servant is liable to an action at the suit of the party who has been induced by the false character to employ the servant, and may recover any damages which he may suffer in consequence of employing him.

Formerly a settlement was gained by residence in a parish under a contract of hiring and service for a year, but by the Poor Law Amendment Act no settlement can for the future be gained by this means. (Blackstone, *Com.*, book, 1, c. 1, § 1, *Born's Justice*, tit. 'Servants'.)

SERVICE. [SERVANT.]

SERVICES. [TENURE.]

SESSION, COURT OF, SCOTLAND. [JUSTICIAR OF SCOTLAND.]

SESSION, KIRK. [GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND.]

SESSIONS. A session is the court during which any court of law transacts the transaction of judicial business. The term Sessions is commonly used to denote the meeting of the justices of the peace, or other district which has a separate commission of the peace, or execution of the authorities conferred on the crown by that commission and the authorities given by act of parliament.

County Sessions.—The commission of the peace issued by the crown for the purpose of creating county magistrates consists of two branches. The first relates to the powers to be exercised by the justices individually and separately. The second branch of the commission creates the powers of the

held in sessions. It begins as we have also assigned you, two or more of you (of whom you, the aforesaid A. B., C. D., we will shall be one), our justice the truth more fully, by good and lawful men of the county, by whom the truth of shall be better known, of all manner of felonies, poisonings, etc., sorceries, arts magic, trespassings, regratings, ingrosses, extortions whatsoever, and of other crimes and offences, so justices of our peace may or will to inquire, &c.

As "of whom any one of you A. B., C. D., E. F., &c. we be one," constitute the Quorum called because when the comes in Latin, the clause ran A. B. vel C. D. vel E. F., &c. volumus."

ate 1 Mary, sess. 2, c. 8, s. 2, sheriffs from exercising the sion of the peace during the they act as sheriffs. If a man a duke, archbishop, marquess, count, baron, bishop, knight, esquire-at-law, his authority as the peace remains. (1 Edw.

By 5 Geo. II. c. 18, s. 2, attornies, and proctors are from acting as justices of the county during the time that one in practice.

ing of the justices held for the acting judicially for the whole comprised within their commissaries a court of General Session see. By 12 Rich. II. c. 10, is required to be held in every the year, or oftener if need be. sessions so held are styled courts

Quarter-session of the peace, sessions." By different statutes quarter-sessions are directed to uniform periods. The times they are directed to be held are, each after the 11th of October, each after the 28th of December, each after the 31st of March, each after the 24th of June. so justices act irregularly in to convene the quarter-sessions

at the prescribed periods (except the April sessions, in respect of which power is expressly given to the justices to alter the time to any day between the 7th of March and the 22nd of April), sessions held as quarter-sessions in other periods of the quarter are legal quarter-sessions. When the business to be transacted at a court of quarter-sessions is not completed before the time at which it is thought desirable for the justices to separate, the court is usually adjourned to a subsequent day; this is also done when there is reason to expect that new matters will arise which it will be desirable to dispose of before the next quarter-sessions. Two justices, one of them being of the quorum, may at any time convene a general session of the peace; but at such additional session no business can be transacted which is directed by any act of parliament to be transacted at quarter-sessions.

Both general sessions and general quarter-sessions are held by virtue of a precept under the hands of two justices, requiring the sheriff to return a grand jury before them and their fellow-justices at a day certain, not less than fifteen days after the date of the precept, at a certain place within the district to which the commission extends, and to summon all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties within the county.

Persons bound to attend at the sessions are:—First, all justices of the peace for the county or district. Secondly, the custos rotularum of the county, who is bound to attend by himself or his deputy, with the rolls of the sessions. Thirdly, the sheriff by himself or his under-sheriff, to return the precept and lists of persons liable to serve on the grand or petty jury, to execute process, &c. Fourthly, the several coroners of the county or district. Fifthly, the constables of hundreds or high constables. Sixthly, all bailiffs of hundreds and liberties. Seventhly, the keepers of gaols, to bring and receive prisoners. Eighthly, the keeper of the house of correction, to give in a calendar and account of persons in his custody. Ninthly, all persons returned by the sheriff as jurors. Tenthly, all persons who have entered into a recognizance to

answer charges to be made against them, or to prosecute or give evidence upon charges against others.

Persons summoned on grand or petty juries ought to be males between 21 and 60 years of age, who are possessed of 10*l.* a year in lands or rents, or 20*l.* a year in leaseholds but an unexpired term or terms of 21 years or more, or who are householders, rated to the poor on a value of not less than 20*l.* (in Middlesex 30*l.*), or who occupy houses containing not less than fifteen windows, and who are not peers, judges of the superior courts, clergymen, Roman Catholic priests, dissenting ministers following no secular employment but that of schoolmasters, and many others.

The justices in sessions have criminal jurisdiction, to be exercised partly according to the rules of common law and partly pursuant to different acts of parliament; they have also jurisdiction in certain civil matters created by different statutes; they have an administrative power in certain county matters; and they have power to fine and imprison for contempt.

I. The criminal jurisdiction of justices in general and quarter-sessions is now defined by the 5 & 6 Vict. c. 38, which enacts "that after the passing of this Act neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any session of the peace nor the adjournment thereof try any person or persons for any treason, murder, or capital felony, or for any felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or for any of the offences mentioned under the 18 heads contained in the first section of the act. The second section provides that any judge of the supreme courts at Westminster, acting under a commission of oyer and terminer and gaol delivery for any county, may issue a writ or writs of certiorari or other process directed to the justices of the peace acting in and for such county, &c. or to the recorder of any court within the same county, commanding the said justices and recorder severally to certify and return into such

court of oyer and terminer, &c. all indictments and presentments found or taken by such justices or recorder of offences which after the passing of this act they will not have jurisdiction to try, and the several recognizances, examinations, and depositions relative to such indictments and presentments; and, if necessary, by writ or writs of Habeas Corpus may cause any person in the custody of any gaol or prison, charged with any such offence, to be removed into the custody of the common gaol of the county, that such offence may be tried under the said commission. The fourth section empowers any court at general or quarter-session or adjourned session of the peace to divide such court into two courts, which may sit apart for the better despatch of business, in the manner and subject to the conditions in this section mentioned.

Previously to the 6 & 7 Will. IV. c. 114, it was in the discretion of the magistrate before whom the depositions were taken, whether he would allow them to be inspected; even the party accused had no right to demand a copy of the depositions, though in cases of treason or felony he was entitled to demand a list containing the names of the witnesses for the prosecution. But by that act (s. 3) "all persons held to bail or committed to prison for any offence, are authorised to require and have, on demand, from the person who has the lawful custody thereof, copies of the examinations of the witnesses respectively upon whose depositions they were held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding three halfpence for each folio of ninety words, subject to a proviso, that if such demand be not made before the day appointed for the commencement of the sessions at which the trial of the person on whose behalf such demand is made is to take place, such person is not to be entitled to have any copy of such examination of witnesses, unless the person to preside at such trial be of opinion that such copy may be made and delivered without delay or inconvenience to such trial. The chairman is, however, authorised to postpone the trial on account of such copy of the examination of witnesses not having been made before the day appointed for the commencement of the sessions at which the trial of the person on whose behalf such demand is made is to take place, such person is not to be entitled to have any copy of such examination of witnesses, unless the person to preside at such trial be of opinion that such copy may be made and delivered without delay or inconvenience to such trial. The chairman is, however, authorised to postpone the trial on account of such copy of the examination of witnesses not having been made before the day appointed for the commencement of the sessions at which the trial of the person on whose behalf such demand is made is to take place, such person is not to be entitled to have any copy of such examination of witnesses, unless the person to preside at such trial be of opinion that such copy may be made and delivered without delay or inconvenience to such trial."

raigned, and the trial proceeds in the same manner as at the assizes. If the prisoner be found not guilty, he is immediately set at liberty, unless there be some other matter before the court upon which he ought to be detained. If a verdict of guilty be returned, the sentence is pronounced by the chairman, such sentence, where the amount of punishment attached to the offence is not fixed, being first determined by the opinion of the majority of the justices present.

The sessions cannot be held without the presence of two justices at least; nor can they be adjourned by one justice, though two or more may previously have been present. Every act done as an act of sessions, before two justices have met, or after two have ceased to be present, is void.

The crown may grant a commission of the peace not only for an entire county, but also for a particular district within the county. In order, however, to exclude the interference of the county justices in the particular district, it is necessary either to introduce into the commission of the peace for the particular district a clause excluding the jurisdiction of the county magistrates, which is called a *ne-intromittant* clause, or to grant a new commission to the county magistrates excluding the particular district. If the former, which is the usual course, be taken, the county magistrates may still hold their sessions within the particular district, though they can exercise no jurisdiction in respect of matters arising within the district.

Petty and Special Sessions.—A meeting held by justices for the transaction of magisterial business arising within a particular district which forms a subdivision of the county or district comprised in the commission of the peace, is called a *petty session*; and if the meeting be convened for some particular or special object, as the appointment of overseers of the poor, of waywardens, of examiners of weights and measures, &c., it is called a *special session*. A meeting of magistrates cannot legally act as a special session, unless all the magistrates of the particular division are present, or have had reasonable notice to attend.

Borough Sessions.—The Municipal Corporation Act (5 & 6 Wm. IV., c. 63) directs that the recorder of any borough to which a separate quarter-sessions is granted under the provisions of that act, shall be the sole judge of such court [RECORDER], leaving ordinary duties of magistrates and sessions to be performed by the justice of the peace appointed by the crown for the city or borough. The recorder is required to hold a court of quarter-sessions once in every quarter of a year, or other and more frequent times as he may think fit, or as the crown may direct. Borough quarter-sessions are never, like county quarter-sessions, appointed to be held in particular cases. In case of sickness or unavoidable absence, the recorder is authorised, with the consent of the town council, to appoint a barrister of five years' standing to be deputy recorder at the next session, and no longer. In the absence of the recorder and of any deputy recorder, the court may be opened, and adjourned, and recognisances respite, by the mayor, but the mayor is not authorised to exercise other judicial act. Where it appears to the recorder that the sessions are to last more than three days, he may appoint an "assistant barrister" of five years' standing to hold a second court for the trial of such felonies and misdemeanors as shall be referred to him, provided it has been certified to the recorder by the mayor and two aldermen, or the council have resolved that such a course is expedient, and the name of the assistant-barrister has been approved by a secretary of state.

Every burgess of a borough (or of a city), having a court of quarter-sessions (unless exempt or disqualified in any wise than in respect of property), is qualified to serve on grand and petty juries, and on the town-council, and the justice of the peace, treasurer, and town-clerk of the borough, are exempt and disqualified from serving on juries within the borough; and they and all burgesses of boroughs having separate quarter-sessions are exempt from liability to serve on petty juries at the county sessions.

Other matters required by statute.

at quarter-sessions, and not expressly referred to the town-council, devolve on the recorder, as the appointment of inspectors of weights and measures, &c. persons imprisoned in a borough gaol by county magistrates, under 6 and 7 Will. IV., cap. 105, may be tried at the borough sessions for offences committed out of the borough.

All criminal jurisdiction, which, before the passing of the Municipal Corporation Act, existed in any borough to which no part of quarter-sessions has since been added, is taken away by the 107th section of that act.

SETTLEMENT. [POOR LAWS.]

SEWER, a place, according to Lord Coke, where water issues, or, as is said vulgarly, "sues," whence the word *suer*, sewer. The word has acquired notoriety as giving the title to "The Law of Sewers," an important branch of English law. According to that law, the superintendence of the defences of the land against the sea, and against inundation, land-floods, and of the free course of navigable rivers, has been immemorially, from the beginning of laws," says Calke, matter of public concern; and from early periods commissions under common law have from time to time been issued by the crown, empowering persons to enforce the law on such subjects. Many statutes have been passed relating to sewers. The first, according to Lord Coke, is "Magna Charta," c. 23, which provides for the taking down of trees. But the most important of these is 21 Hen. VIII. c. 5, commonly called "The Statute of Sewers," by which the law was extended, explained, and settled. Several statutes have been since passed, the most comprehensive is the 3 & 4 Edw. IV. c. 22. From these two statutes, the decisions especially on that of Henry VIII. and the text-books, the general law of sewers must be ascertained. The Act of William IV. does not affect any statute or local Act for sewers concerning any county or district, &c., or any commission of sewers in the county of Middlesex within ten miles of the Royal Exchange, except such as lie within any commission of sewers of the county of Essex, or any navigable river, canal, &c.,

under the management of trustees, by virtue of any local or private act, or any law, custom, &c., of Romney Marsh or Bedford Level.

The appointment of commissioners of sewers by the late Act is vested in the lord chancellor, the lord treasurer, and the two chief justices, or any three of them, of whom the chancellor must be one. Such as have not acted as commissioners before the passing of the statute of William IV. must be possessed, in the same county or the county adjoining that for which the commission issues, of landed estate in fee, or for a term of 60 years, of 100*l.* yearly value, or of a term of 21 years, 10 of which are unexpired, of 200*l.* yearly value, or be heir apparent to an estate of 200*l.* yearly value. Bodies corporate and absentee proprietors possessed of a landed estate of 500*l.* yearly value taxed to sewers may qualify an agent to act as commissioner, provided such agent is named in the commission; persons named *ex-officio* in any commission as mayor, &c., may act without any further qualification. Coincidentally with every commission there issues from the crown-office a writ of *dedimus potestatem*, addressed to a list of persons therein named, who are part of the commissioners named in the commission, and authorized to administer the oaths to the commissioners. Previous to entering on office each commissioner takes an oath before these parties for the due performance of his duty, and that he is possessed of the requisite qualification. A commission continues in force for ten years from the date of it; and the laws, decrees, and ordinances made under it, notwithstanding the expiration of the commission, continue in force until they are repealed.

Commissioners may be appointed to act in any part of the kingdom of England and Wales or the islands within that kingdom. The English seas are also said to be included within the kingdom of England. Each commission specifies the district to which it applies. The authority of the commissioners extends over all defences, whether natural or artificial, situate by the coasts of the sea, all rivers, water-courses, &c., either navigable or entered by the tide, or which

directly or indirectly communicate with such rivers, &c. But they have no jurisdiction over any ornamental works situate near a house and erected previous to the Act of William IV., except with the consent in writing of the owner. They have power to repair and reform the defences, and to remake them, when decayed, in a different manner, if this can be done more commodiously. They may also cause rivers, &c., to be cleansed and deepened, and remove any obstructions, such as weirs, mill-dams, and the like, which have been erected since the time of Edward I.; or, if such ancient obstructions have been since increased, they may remove the increase. If any navigable river is deficient in water, they may supply it from another where there is an excess. But the object to be attained by all these acts must be of a general nature, and have for its purpose the furtherance of public general defence, drainage, or navigation. The commissioners have authority also to make and maintain new, and to order the abandonment of old works, and to determine in what way the expenses of the new works shall be contributed; but they cannot undertake any new work without the consent in writing of three-fourths of the owners and occupiers of the lands to be charged. They may also contract for the purchase of lands where necessary to the accomplishment of their objects; the price of which, if not agreed on, must be determined by a jury summoned for that purpose. In them is vested the property in such lands, and in all the works, tools, materials, &c., of which they are possessed by virtue of their office. The commissioners have power to make general laws, ordinances, and provisions relating to matters connected with sewers in their district, as well as to determine in particular instances. These laws are to be in accordance with the laws and customs of Romney Marsh, in Kent, or "after their own wisdoms and discretions." The mention of discretion occurs very frequently in the statute of Henry VIII., and would seem to vest, as in truth it does vest, a very large and undefined power in the hands of the commissioners. Notwithstanding, however, this reference

to their discretion, they have no authority to do anything which is not both just reasonable, and also in accordance with the laws of the land.

To accomplish the purposes for which they are created, the commissioners have power to appoint a clerk, and various officers called surveyors, collectors, bailiffs, &c.; and they themselves, or any of them, when duly assembled, constitute a court of record. By their own view of the report of their surveyor, they may ascertain what old defences need repair, what new ones are necessary, what impediments or annoyances require removal, what money or materials must be provided for such purposes. To form a court, ten days' notice to the owners and occupiers of lands within the district are required to attend are necessary, except in a case of emergency, when they may be summoned by two commissioners immediately. It is the duty of the commissioners, on receipt of the precept of the court, to summon a jury from the county to attend in their court. Before any charge can be laid, the commissioners must further inquire, through the means of the jury, by witnesses examined on oath before them, where it is that a defence is needed or any nuisance exists, and by whose neglect or default if such things have occurred, and what parties are liable to contribute to the expenses of putting all in a proper condition. The general fundamental criterion, which the liabilities of parties to contribute must be ascertained, is the circumstance of their deriving benefit or saving injury from the works of sewers. When a party has been once pronounced as liable by a jury, he is presumed to continue liable during the existence of that commission. The liabilities of parties to contribute may arise either by holding lands on condition of contributing to repairs of a bank, &c., by custom, or prescription, or by covenant. If a man holding lands charges them by covenant for himself and his heirs, and the lands descend to the heirs, he is liable to their amount. Parties may also be charged by reason of the ownership of the bank, &c., requiring repairs, or because they have the use of

it; or because they are fronted it, have lands joining the sea in defence are needed. If no one is to be liable for any of these expenses are then to be imposed all the level, that is, all the land on the same level. The reason for this is, that all such land is like to suffer by any injury to the adjacent sea, or by any defect of drainage, and benefits alike by erection and maintenance; therefore it is therefore ought to contribute the expenses incurred. Even in cases where a special liability, has been above stated, rests on individuals, the whole level is not to contribute in any case of the danger; or where, in spite of repairs having been done by the tide, an injury has occurred by flood and inevitable accident, as ordinary tide or flood, or where liability is insufficient for the emergency. Any new work also made and maintained at the expense of the whole level; and where extraordinary repairs are necessary to a part of the sea, not the level only, the whole county is liable. The lands within the level are all those within any lands or tenements, and *proinde*, such as rights of common fishery, &c., provided they require by the repair or injury by repair; but a party may be exempted contributing to a general out, on the ground of a special cause which he is bound to do some or not, such as repairs of a bank general service. The duty of the hearing witnesses, is to present parties liable to repair; and in cases where the whole level is liable, to the particular quantity of land or out that every one has who is within the level. It is sufficient to the assessable owner or occupier, presentments may be traversed or denied by the party whom they charge, may attempt to disprove the facts; then, and so show that he is not the extent charged, or not liable. After the necessary facts are ascertained, the commissioners make a decree

for the assessment of every person in the proportion to which he appears to be liable. The apportionment must be made by the commissioners; it is not sufficient for them to assess a certain sum upon a township or other district, leaving it to the parties themselves to apportion. Where, by reason of immediate necessity, works have been done without any presentment of a jury, the commissioners may afterwards make a rate to defray the expenses. In cases of emergency, the commissioners, by their order, may compel the service of carts, horses, and labourers; they may take soil, &c., and cut down timber within the level, if necessary for their purposes, subject of course to a proper remuneration, which may be recovered before them.

After an assessment has been duly made and demanded, the commissioners may by their warrant direct their bailiff to distrain and sell the goods of those who neglect to pay (the distress may be made without the district of the commissioners); or the party may be amerced for non-payment, or the lands themselves which are liable may be sold. In case of such a sale, a certificate of it must be made by the commissioners into Chancery. Constables within the district are bound to obey the orders of the commissioners. In cases where an obstruction or impediment has been, after presentment by the jury, ordered to be removed, the party causing it may be amerced; or if he is unknown, then the person who most suffers by the injury may be empowered by the commissioners to remove it; or the surveyor, after notice, may do what repairs, &c., are necessary, at the expense of the parties making the default; and for any act of negligence or default or disobedience, an amercement may be imposed by the jury. The commissioners themselves may enforce parties to fulfil the duties lawfully imposed upon them. Thus they may fine a jurymen who refuses to act, or a sheriff who fails to summon a jury; and they may maintain order in their court by fining and imprisoning those persons who attempt openly to disturb it.

If the commissioners make an order in a matter out of their jurisdiction, the

order may be removed by certiorari into the Court of King's Bench, and there quashed; and the commissioners are fineable for contempt if they proceed after a certiorari has been allowed. But a certiorari cannot be demanded of right: it is within the discretion of the Court of King's Bench to refuse it, and the impropriety of the order must be made out very distinctly before a certiorari will be granted. Where the order is for repairs, and is made upon an inquisition before a jury who find that the party ought to repair, the court will not proceed in the matter unless the party charged consents to repair in the meantime. If it afterwards appears that he ought not to repair, he will be entitled to reimbursement, which may be awarded to him by the commissioners. An order which is good in part may be confirmed for so much, although it is quashed for the remainder.

An action may be brought against the commissioners for anything done by them beyond their authority. They may sue and be sued in the name of their clerk, who, nevertheless, may be a witness for them. (*Callis On Sewers*; 4 *Inst.*; *Comyns's Digest*, 'Sewers'; *Viner's Abr.*, 'Sewer'.)

The sewers of the city of London and its liberties are under the care of commissioners appointed by the corporation, who were first empowered to make the appointment by the 19 Chas. II., c. 31, the act for rebuilding the city after the great fire. They were entrusted with this power by that Act for seven years only. A few years afterwards it was made perpetual; and by 7 Anne, c. 9, the commissioners of sewers for the city of London were invested within the city and its liberties with all the authorities possessed by the ordinary commissioners elsewhere. The Roman law (*Dig.* 43, tit. 12, 13, 14, 15, 21, 23) contains certain provisions as to public rivers, cuts for navigation, and private and public drains in towns (cloacæ).

SHERIFF, the Shire-Reve (scyr-gerefa), from the Saxon word *reafan*, "to levy, to seize," whence also greve. The German word is *graf*. The gerefa seems to have been a fiscal officer. In the Saxon period he represented the lord of a district,

whether township or hundred, a folk-mote of the county; and with district he levied the lord's dues, at formed some of his judicial fun (Palgrave, *Rise and Progr.*, i. 82, was usually not appointed by the but elected by the freeholders of the district; and, accompanied by four of was required to be present on its as well as on the lord's, at the folk county court. In like manner the prince or king employed in the shire larger districts his gerefa or reve levied his dues, fines, and amerces to whom his writs were addressed exercised on his behalf regal rights the shire, for the preservation of the and the punishment of offenders; pro over the courts-leet or views of pledge, and (at least in the absence earl in ancient times, and since the quest instead of the earl) presided the hundred and county courts. difficult to determine how far the tions of the sheriff were concurrent and how far derived from, the eald or earl of Saxon and Danish times the confusion between these offices been increased by the translation, ancient laws, of the word sheriff Latin into *vice comes*, and in No French into *visconte* or *viscount* (of the earl); whereas certainly the sheriff's powers even in Saxons were derived from the freeholders from the crown alone, and the won (gerefa) in German was equivalent earl. That before and for a century the Conquest the sheriff had powers pendent of the earl, is obvious from fact, that in the circuit (tourn) who made periodically (*Spelman's Gl.*, Comes) of his shire for the admission of justice (as the Saxon king in circuit of his realm), he was accountable not only by the freeholders, but a bishop, the earl, and barons, until noblemen were exempted from the by statute 52 Henry III. c. 10 (1267).

Sometimes the shrievalty, by the crown, was hereditary; it was held for life, or for many years, and were sometimes more sheriffs than a county, the persons chosen for the

according to Spelman, "totius provincie;" but the sheriff was chosen by the freeholders of the county.

The statute 25 Edward I. c. 5, says that "the king hath granted a people that they shall have elect their sheriff in every shire (where writ is not fixed in fee) if they (rather declaratory of the people's than a grant of a new privilege).

In Edward III. c. 7, it is enacted that the sheriff survey in his bailiwick more year, and then another, who hath sufficient in his bailiwick, shall be of on the morrow of All Souls (3rd Dec.) by the chancellor, treasurer, or baron of the exchequer, taking the chief justices of either bench be present.

present the crown in most cases to the sheriff, and also fills up any which is concluded by the death writ during his year of office. To corporations of cities which are of themselves charters have given him to elect their own sheriffs; and of London has the perpetual to elect the sheriff of Middlessex. county of Durham the bishop was until he was deprived of palatine in 1836; and in Westmoreland he is hereditary in the family of off Thwait as lieutenant of the sh. to whom the shirealty was by King John. The annual appointment of sheriffs is now in most counties thus:—On the morrow of St. (25th November), the lord chancellor, lord of the treasury, and chief of the exchequer, together with all justs of the three courts of common law in the exchequer chamber, the floor of the exchequer presiding, sit; then report the names of all persons in each county, and of first on the list is chosen, unless some good reason for exemption. if thus made is again considered at the meeting of the Cabinet held on the 1st of the Parliament (2nd Feb.) at the president of the council, ended by the clerks of the council, he excuses of the parties nominated are examined, and the names are determined to for the approval of the sh.

the queen, who, at a meeting of the privy council, places the parchment with a punch opposite the name of the person selected for each county; and hence has arisen the expression of "pricking the sheriffs." The judges of assize annually add the requisite number of names to their lists by inserting those of persons recommended by the sheriff who goes out of office.

The sheriff derives his authority from two patents, one of which commits to him the custody of the county, and the other commands the inhabitants to aid him. He takes an oath of office, the greater part of which relates to his collection of the crown revenue, and he gives security to the crown that he will duly account. He then appoints an under-sheriff, by whom in fact the duties of the office are performed. These duties are various and important. Lord Coke quaintly says that the sheriff has a triple custody—1st, of the life of justice, because to him are addressed the writs which commence all actions, and he returns the juries for the trial of men's lives, liberties, lands, and goods; 2ndly, of the life of the law, because he executes judgments of the courts; and 3rdly, of the life of the republic, because he is in his county the principal conservator of the peace. He presides in his own court as a judge, and he not only tries all causes of 40s. in value, but also much larger questions under the writ of *Scire facias*. By *Magna Charta* he is prohibited from holding pleas of the crown. He presides at all elections of members of parliament for the county and coroners, and hence he cannot during the year of his office be elected a knight of the shire. He apprehends all wrong doers, and for that purpose, in criminal cases, he is entitled to break open outer doors to seize the offender; he defends the county against riot or rebellion or invasion [*LORD-LIEUTENANT*], and in this end may require the assistance of all persons in it who are more than fifteen years of age, and who, when thus summoned under the sheriff's command, are called the *posse comitatus*. To refuse to the sheriff the aid which he requires is an offence punishable by fine and imprisonment. The sheriff takes precedence of

all persons in the county. He seizes all lands which have fallen to the crown, and levies all fines and forfeitures; but he is not permitted to act as a justice of the peace. He executes all writs that issue from the superior courts, whether they are writs that commence an action or writs of execution; he is likewise responsible for the execution of criminals. He receives and entertains the judges of assize, on whom he is constantly in attendance whilst they remain in his shire.

To assist him in the performance of his duties, the sheriff employs an undersheriff and also a bailiff and gaolers, from whom he takes security for their good conduct. He is prohibited by very ancient statutes from selling his office or the profits of any part of it.

The liability of the sheriff for breach or neglect of his duties is a frequent source of litigation. Few assizes occur without actions being brought against him for illegal arrests or levies, or for wrongfully abstaining from executing the process addressed to him. Thus the decisions affecting him are numerous and complicated, and there are many treatises concerning the office, of which Dalton's *'Office and Authority of Sheriff'* (1682), is the most relied on.

(*Spelman's Glossary*, articles *'Graphio,' 'Comes,' 'Vice-Comes,' Coke upon Littleton*, Hargr. and Thomas's edition, vol. i.; *Bacon's Abridgement*; *Palgrave's Rise and Progress of the English Constitution*, i.)

SHERIFF (SCOTLAND). In Scotland the duties of the sheriff are not, as in England, almost entirely executive. He exercises an extensive judicial authority, and a large portion of the general litigation of the country proceeds before this class of local judges. In earlier times his authority appears to have been merely of an executive character, and, appointed by the crown, he was the person to whom the royal writs, issuing from the supreme courts, were usually directed. He was the ordinary conservator of the peace within the local limits of his authority. He was an important fiscal officer, having in the general case the duty of levying the feudal casualties, forfeitures, and other items of revenue; and by statute

he was vested with the power of using the military force of the county to the weapon-showing. In very times, his tenure of office appears to have been limited by the grant; at a comparatively later, the office became the general case, hereditary. The principle on which that division of shires, by which the boundaries of sheriff's authority were marked, is generally known. In all Latin documents he was called the vice-comes. It might thence be inferred that sheriff was the deputy of a comes. There has, however, no trace been of the dignity of an earl in Scotland involving the right to exercise judicial executive functions, nor did that like the authority of the sheriff, bear reference to the boundaries of the county or to any other territorial limit. The terms of the Act for abolishing heritable jurisdictions in Scotland, which will be noticed below, might even lead to the supposition that they were founded on the idea of the sheriff being a principal or subordinate officer, if it were not clear that the structure of that Act in some measure affected by a distinction between the office of high sheriff in Scotland and that of sheriff in Scotland. The Act, viewing the appointment of a principal or high sheriff from among the unprofessional gentry, and of the judicial officer from the legal profession, provides that "it shall not be lawful any principal or high sheriff or sheriff in Scotland personally to judge in any cause, civil or criminal, within his or her stewardry in virtue of such his or her office, or in any way to exercise any law or usage in any way to the contrary notwithstanding." (20 Geo. 4, § 30.) By the same statute the principal or high sheriff can only be appointed during pleasure, or for a term not exceeding a year. It is not easy to discover how such a nominal officer came into existence, if it actually was in existence before the passing of the Act. The commissioners who reported to the courts of justice in Scotland in 1822 stated that they could not discover any functions which it was the duty of the holder of that office to perform; and in reference to the power

they say "It is to be noticed, notwithstanding a right of appointing an act a principal or high sheriff such by the statute of George III. it was no longer competent to an officer *heretofore*. These are mentioned to be made subject to the statute, and it was well as commissions of this kind as in very recent times, been the crown, for purposes of the government, and connected with of Lord-Lieutenant. But what have been the views of the as to the proper ministerial or tions of such an officer in time is certain that by the enactment of the whole judicial powers of every magistrate for the county expressly reserved and excepted grant to be thereafter made of sheriff in this part of the

And these provisions were in harmony with the previous and out state of the law." The Act, indeed, to generally called the on Act, was passed for the purpose of abolishing all those remnants of remnants of Scotland which were, or in any other shape of the property) of bringing all judges within the appointment of, and their holders under to the public. It was passed on account of the insurrection of

It is the point from which we see the equal administration of Scotland. By the same statute, he is authorized to appoint one or others. This was in conformity practice, by which the sheriff, or his substitute, is to be trained to the fully appointed a legal practitioner as his substitute. At the time there is a substitute in every of the larger counties there or more. Both the sheriff and his substitute are lawyers, but the latter is a resident judge, the former frequenting the courts in Edinburgh: he hears appeals from his and making occasional visits to the. By the Jurisdiction Act it is said that each sheriff should his county during four months

in each year. This provision fell into desuetude, and it became the usage for such sheriffs as continued to practise at the bar to remain in Edinburgh, while the greater portion, who had given up or had not obtained practice, resided at their country seats, or wherever choice or convenience dictated. This circumstance was the object of much animadversion by the friends of law reform, and a wide difference of opinion was expressed on the matter, some maintaining that the sheriff as well as his substitute ought to be a resident judge, while, in the words of the Report above cited, the former (who is styled Sheriff Depute) in Edinburgh "was in some degree countenanced by high legal authorities, who consider the attendance of the sheriff-depute in the court of session, during the sittings, to be more useful than a literal adherence to the statutory rule." It has been supposed that such an attendance tends both towards a higher degree of legal learning in the sheriffs and to uniformity of practice being promoted by their occasionally consulting each other.

It was very clear, however, that it was disadvantageous to the public that there should be any of these judges who neither reside within their counties nor at the fountain of Scottish legal learning in Edinburgh, and by the 1 & 2 Vict. c. 119, it was enacted that each sheriff appointed after the 31st of December, 1855, shall remain in attendance on the court of session, but shall hold eight courts in his county during the year. The sheriffs of Edinburgh and Lanark are exempted from attendance on the court of session, in the understanding that the business of their respective courts is sufficient fully to occupy their time. It may be mentioned that many law reformers maintain that these two sheriffships are a type of what the others ought to be. The incumbents receive much higher salaries than the other sheriffs, and have their time fully occupied. It has been held that, in regard to the other counties, instead of appointing persons who are endeavouring to have business at the bar, and giving them duties which only occupy part of their time, and salaries for which they would not generally agree to

give up their profession, it would be wiser to unite several counties together, and employ lawyers with salaries equal to the full value of their whole time, to these enlarged districts. These various opinions were very actively discussed from ten to fifteen years ago, but it is now pretty clear that it is in the persons of the sheriffs-substitute, or permanent local judges, that the public look for the beneficial working of the system. In civil questions an appeal lies (without new pleadings) from the sheriff-substitute to the sheriff, but wherever the former is a sound lawyer and an industrious man, the privilege is seldom used. The salaries of the sheriffs-substitute have lately been raised, according to a sound policy advocated by many of the most cautious and economical politicians of the country; they average at present about 450*l.* The salaries of the principal sheriffs vary widely, but the whole amount of their aggregate incomes, as returned to parliament in 1843 (*Parliamentary Papers*, 270), when divided by their whole number, gives 55*l.* to each. From the state in which the profession of the bar of Scotland has been for the past ten years, several of its members have been induced to accept the office of sheriff-substitute as vacancies have occurred. Formerly the office fell to country practitioners, who, not quite contented with the emoluments, eked them out by private practice; a state of matters seriously detrimental to the equal administration of justice. In some instances, even retired officers in the army or unprofessional country gentlemen were the best qualified persons who would undertake the office. By the Act of 1 & 2 Victoria, it was provided that no sheriff-substitute should act as a law-agent, conveyancer, or banker. By the same Act it was provided that though the sheriff-substitute should continue to be appointed by the sheriff, he should not be removable, except with the consent of the lord president and lord justice clerk of the court of session. In terms of the same Act, the substitute must not be absent from his county more than six weeks in one year, or more than two weeks at a time, unless he obtain the consent of the sheriff, who must then

act personally or appoint another. It may be observed, for the preventing some confusion while phraseology of the statute law in a to sheriffs may occasion to the reader, that in one or two instances that of Kirkcudbright, the pence exercises the functions of sheriff is the Stewart. This designation of origin to certain peculiarities of tenure which cannot be briefly explained and are subject to doubt and. After the Reformation, the sheriffs generally appointed commissaries of local commissariat districts which nearly conformed with their respective jurisdictions, and in 1823 (4 Geo. IV.) the commissariat functions were appointed to be merged in those of the sheriff.

The jurisdiction of the sheriff in matters does not extend to questions regarding heritable or real property the 1 & 2 Vict. c. 119, jurisdiction questions as to nuisance or damages from the undue exercise of the right property, and as to servitudes, specially conferred on him. He judges in actions which are deeds of rights, or which are of a real nature—for the purpose of real deeds or legal proceedings. In respects his jurisdiction extends to actions on debt or obligation, any limit as to the importance of interests involved. He does not sit in jury, though it appears that such institution was formerly connected with civil jurisdiction of the sheriff. Authority by special statute summons decide small debt cases, *i. e.* cases the pecuniary value of the matter does not exceed a hundred pounds *8*l.* 6*s.* 8*d.** When he acts in the small court, he makes circuits through county; his ordinary court is stated. By railway statutes and other local administration special functions frequently conferred on him, as the clauses for taking lands he is appointed to act as presiding judge a jury is appointed to be chosen. By two Acts of the 1 & 2 Victoria, 114 and 119, much was cleared up and rendered efficacious the administration of the powers

They were enabled, by indorping the writs from other sheriffs, to force in their respective counties were invested with increased power for putting their judgments and proceedings in execution. The duty of the sheriff, when no proceedings had been taken to enforce them, was carried into the court of session at Edinburgh.

The authority of the sheriff in matters of civil law is practically to a great extent derived from the proceedings of the crown in leaving prosecutions to the discretion of his court, or removing them from the court of Justiciary. It is not very easy to be traced how far, in old practice, the sheriff's jurisdiction was inferior to that of the Court of Justiciary: he undoubtedly possessed the power of punishing offenders, though it has been long disclaimed. The power of transporting, which was imperatively late introduction, he possessed, not having any criminal jurisdiction beyond his county. By degrees it came to be considered that the jurisdiction in the four pleas of the crown—murder, robbery, and wilful fire—was exclusively in the higher courts, and that the sheriff's jurisdiction in the most important cases in the sheriff's court was tried by jury. In more trifling cases the sheriff performs the functions of a justice of the peace. In these cases the sheriff must not exceed a fine of sixty days' imprisonment (9 Geo. 23). There is an intermediate class of cases by which the sheriff may try important cases without a jury, but is not encumbered with formalities—others, a written authentication of the sheriff's decision—as not to hold out much merit for its practical adoption.

28. The law of England relating to ships and seamen is partly founded on principles of maritime law, and partly on acts of parliament. The subject may conveniently be divided into two parts:—

1. That relating to the ownership of ships, and the incidents.

2. That relating to the persons employed in the service, &c., of merchant ships.

3. That relating to the carriage of goods and passengers in merchant ships, the rights and

duties, &c., of freighters and passengers, of owners and their servants.

4. To the employment and wages, &c., of merchant seamen.

1. A ship belongs to those at whose expense it has been built, but it may pass into other hands by purchase, by the death or bankruptcy of the owners, or by capture by an enemy. The general law relating to chattels applies to ships with certain modifications. A sale by a party who has the mere possession of a ship can in no instance vest the property in the purchaser. The master, except when the clearest necessity exists, cannot sell the ship which he commands. Even if he be a part-owner, his sale is valid only so far as his own part is concerned; and in the case of a registered ship, even supposing him to have an authority from the owners to sell, still he must observe the forms prescribed by the registry acts. A necessity for a sale may arise when the ship is in a foreign country, where there are no correspondents of the owners, and the master is unable to proceed from want of repairs, and no money can be obtained by hypothecating her or her cargo. In case a sale under such circumstances should be litigated, the proper questions for the jury to determine are, whether such a necessity existed as would have induced the owner himself, if he had been present, to sell; and whether the actual sale has been made *bona fide*. No inquiry by any court abroad in such matters is conclusive upon those whose property is in question. The property in a ship is now always proved by written documents; and by means of these the property in any ship may be conveyed. But when actual possession is possible, a delivery of it is also necessary to convey a perfect title; otherwise, in the case of the bankruptcy of a seller who is allowed to remain in possession, the property may vest in the assignees. Previous to the passing of the registry acts, 4 Geo. IV. c. 41, and 6 Geo. IV. c. 110, 3 & 4 Wm. IV. c. 55, the same consequences might have ensued from the continued possession of the original owner, in the case of ships mortgaged or conveyed to trustees for the payment of debts. But by the 42nd and 43rd sections of the last act.

provisions are made for a statement of the object and nature of the transfer in the book of registry, and for indorsement on the certificate of registry, by which such consequences are prevented. Enactments to the like effect are made in the bankrupt act, 6 Geo. IV. c. 16, § 72.

In order to complete a title by capture, it is necessary that a sentence of condemnation should be obtained in a court of the nation by whom the capture has been made. This court decides according to the general law of nations. [PRIZE.]

Where repairs have been done, or necessities supplied to a ship, the legal owners, upon proof of their title to the ship, are *prima facie* presumed to be liable. But this presumption may be rebutted by proof that they were done or supplied under the authority and upon the credit of another. The question to be decided, in order to determine the liability is, upon whose credit the work was done or the necessities supplied. If a ship is let out for hire, the owners are no more liable for the work done by order of the hirers, than a landlord of a house would be for work done by order of his tenant. Like observations are applicable with respect to the liability of mortgagees and charterers.

A variety of privileges of trade are confined to ships either of British build, or taken as prizes in war, &c. The first statute passed with a view to effect this object was 26 Geo. III. c. 60. Other statutes, 4 Geo. IV. c. 41, 6 Geo. IV. c. 110, and 3 & 4 Wm. IV. c. 55, were subsequently passed for the same purpose. The object of the legislature has been to confine the privileges of British ships to ships duly registered and possessing a certificate of registry. No ship is to be considered a British ship unless duly registered and navigated as such. There are some exceptions from this enactment: 1, British-built vessels under 15 tons burden, and manned by British subjects, navigating the coasts and rivers of the United Kingdom or of the British possessions abroad; 2, British-built vessels owned and manned by British subjects, not more than 30 tons burden, employed in fishing or the coast-trade about Newfoundland, Canada, &c.; and, 3, Ships

built at Honduras, which, under circumstances, are entitled to the privileges of British registered ships. The registry of a ship is not compulsory, the only consequence of non-registration being that a non-registered ship cannot enjoy the privileges of a British ship. Ships can be registered which elsewhere than in the United Kingdom or in some of its colonies are condemned, or have been condemned, &c., or as forfeited for breach relating to the slave-trade, but also wholly belong to British subjects who reside within the British dominions, or are members of some British company or agents for some house or trade in the United Kingdom. A registered ship may cease to enjoy the privileges of British ships, by sale or decree of a court for benefit of creditors, in consequence of being stranded, by repair to the amount of £100 in a foreign country, and sea-worthy when she left the repairs, and the repairs were for her return. Every ship is to be divided into 64 equal parts, each individual or partnership firm registered as owner or owner in part, more than a 64th part. Proper officers generally are the officers of the port, the spot in question, are appointed for the purpose of making the register, and granting certificates of registry to the owners. The registry must be made at the port to which the ship belongs, which is that port in which the owner resides who is bound by oath required by the act. The act states the name, occupation, and age of each owner, and the share which he holds, the name of the ship, the name of the ship and of her build or tonnage, the name of the surveyor, her tonnage, and it contains a description of her in other respects. The back of the certificate contains the names of the owners, and the shares held by each. The ship cannot afterwards be altered, the property in a ship or any part thereof transferred, it must be done by deed, which receives the contents

the property in the ship is not and the instrument has been the proper officer at the port ship was registered or is about to be re-registered. The officer then enters in accordance with the substance of ownership, and on the certificate; of this is notice to the commissioners.

The transfer is rendered an indorsement on the bill of lading, and the entry in the registry is amended. If the master of a ship, notice of it must be given to the authorities, and a memorandum of the change must be entered in the registry and on the certificate. If a certificate is lost, a fresh one must be made for the purpose of either; and the same form is used in case of any alteration in the ship, or a variance in the particulars in the previous registry. conclusive evidence of ownership is the registry and certificate. A production of the registry is evidence *pro tanto* evidence to any claimant as owner of a ship, and he must prove either that he is the owner, or that he has a right to be entered, or has a right to the entry; neither is it sufficient to allege an allegation of title by evidence of it; as, for instance, a plaintiff in an action of insurance.

A ship is the property of several owners, the rules of most nations provide for the administration of joint property in case of a dispute to the management among owners. The English law contains provisions. The majority are authorized to employ the ship in any probable design; but they are not entitled to do so upon giving to the minority in a sum due to the united shares of the ship the mode of obtaining this sum by procuring a warrant from the admiralty for the arrest of the ship or the security has been given, they bear no share either in the profits or the adventure. If notice of this kind is made to the minority, they ought expressly to

give notice of their dissent both to their joint-owners and all other parties engaged in the proceedings, and they will then be relieved from the necessity of contributing in case of a loss. If they take no steps of the kind, their joint-owners, as in the case of partnership of any other chattel, will not be responsible to them for any consequences short of an absolute destruction by their means of the ship. The same proceedings are proper to be taken where the joint-owners are equally divided in opinion, or the minority have obtained possession of the ship. One part-owner may make the others liable for repairs, &c., done at his order: the usual practice, however, is for the part-owners to unite in appointing one person as a general agent for them all. This person is styled the ship's husband, and his duty, when not specially defined, is to attend to all matters connected with the outfit and freightage of the ship. It is not, however, within his authority to effect an insurance. If he makes any advances he can sue those part-owners on whose behalf those advances are made for what is due to him. In case of disagreement among the part-owners as to the settlement of the accounts concerning the expenses and earnings of a ship, the ordinary remedy is by a suit in equity.

2. *As to the persons employed in the navigation, &c., of ships.*—The master is the commander of the ship; he has the sole management of it. He is responsible for any injury done to the ship or cargo in consequence of his negligence or incompetence. The master of a British ship must be a British subject, and three-fourths of the crew must be British seamen; to this rule there are some exceptions and limitations.

The master can bind the owners by entering into engagements relative to the employment of the ship. Such engagements are of two kinds:—1. A contract by which the whole ship is let to hire during an entire voyage, which generally is accomplished by a sealed instrument called a charter-party. 2. A contract with distinct persons to convey the goods of each, in which case the ship is called a general ship. Such contracts made by the master are legally considered to be

made by the owners who employ him; and in either case they or the master are liable in respect of these contracts. If the charter-party is made in the name of the master only, it will not support a direct action upon it against the owners. Still if the contract is duly made, and under such circumstances as afford either direct proof of authority or evidence from which such authority may be inferred, the owners may be made responsible either by a special action on the case or by a suit in equity. The master can also render the owners liable for repairs done and provisions and other things furnished for her use, or for the money which he has expended for such purposes. In this case also the remedy of the creditor is against the master, unless by express contract the owners alone are rendered liable, and also against the owners. A party who has done the repairs upon a ship has a right to retain the possession of it until his demands are paid; but if he gives up possession, he is on the same footing as other creditors. When, however, the ship is abroad, and the necessary expenses cannot otherwise be defrayed, the master has the same power which the owners or part-owners to the extent of their shares under all circumstances have, to hypothecate the ship and freight as security for debts contracted on behalf of the ship. The contract of hypothecation is called a contract of bottomry, by which the ship upon its arrival in port is answerable for the money advanced, with such interest as may have been agreed on. [BOTTOMRY.] By such hypothecation the creditor acquires a claim on the ship. When the claim has been created by the master abroad, it may be enforced by suit in the Admiralty; but if the ship has been hypothecated by the owners at home, the parties can only have recourse to the common law or equity courts. The Admiralty and courts of equity will recognise the interest of the assignee of a bottomry bond, though at common law he cannot sue in his own name. When money is lent on bottomry, the owners are not personally responsible. The credit is given to the master and the ship, and the remedy is against them only. Still if a party is not content with such security, the master may also render

the owners liable. If the sum by the bond are not repaid, an action must be made to the Court of Admiralty founded on the instrument of loan and an affidavit of the facts, upon which a warrant issues to arrest the ship and the persons interested are cited to appear before the court, which then decides as to be done. If the necessary sum of money cannot be raised by selling the ship and freight, the master may also sell part of the cargo to satisfy it.

The whole of the services of the master are due to his employers; and he may keep himself on his own account the money earned by him is paid to the employers, they can retain it. It is to give information to the owner of the matter which it may be material to know.

The 7 & 8 Vict. c. 112, entitled "An Act to amend and consolidate the laws relating to Merchant Seamen," keeping a Register of Seamen, and the 5 & 6 Wm. IV. c. 19, except such act repeals the acts theretofore and except so far as relates to the establishment, maintenance, and regulation of the office called "The General Office of Merchant Seamen," the act contains the regulations as to the hiring of seamen, their rights and duties.

3. *Of the Carriage of Goods by Sea.* The contracts under which goods are conveyed in a ship are either by charter-party and bill of lading, or by a general contract for their conveyance by a general bill of lading. A charter-party is "a contract, an entire ship, or some part thereof, is let to a merchant for the conveyance of goods on a determinate voyage to one or more places." A charter-party is a written instrument, generally not necessarily, under seal, which is executed by the owners or the master and the master of the one party, and by the merchant or his agent for the other party. The word charter-party is derived from two words *charta partilis*, "a charter," because the duplicate agreement were formerly written on a piece of paper or parchment divided by cutting through the middle into two parts, each containing a word or figure so as to enable

ratify the agreement produced by it. If the charter-party is by and executed by the master, and there are not parties to it, they causing a direct action upon the instrument, indeed, the owners can never bring an action upon it unless their names appear as the parties executing it. But an action may in all cases be brought against the master for a breach of their duties as ship-owners relating to matters inconsistent with the terms of the charter-party. The charter-party states the ports of destination and the freight to be paid, which may be either a sum or so much per ton, or so much per cask or cask of goods. If the charter is not to pay a certain sum for the hire of the ship, or a certain portion of it, or to pay so much per ton, the merchant generally covenants to load a fixed amount or a full cargo. The merchant loads with his own goods or those of others, or he may underlet the ship altogether. The master or owner usually covenants "that the ship shall be tight and strong, furnished with all necessaries for the intended voyage, ready by a day named to receive the cargo, and wait a certain number of days to take it on board, after lading she shall sail with first wind and opportunity to the destined port (the dangers of the sea excepted), there deliver the goods to the merchant or his assigns in the same condition as they were received on board; and further, during the course of the voyage the ship shall be kept tight and staunch, and manned with sufficient men and other things to the best of the owner's endeavours." The merchant usually covenants to load and unload the ship within a fixed time.

The owner of the ship has always a lien upon the goods in the ship, when the freight is to be paid before or on the delivery of the goods at their place of destination of the charter-party, or even, as Lord Tenterden held in *2 Barn. and Ald., 605*, there is "nothing to show that the charter-party of the goods was to precede the charter of that hire." All difficulties are avoided by inserting a clause in the charter-party which shall state that it is meant that the owner

should have a lien upon the lading for his freight and expenses. The owner does not lose his right of lien by depositing the lading in a public warehouse, provided he gives notice that it is to be detained until his claim for freight is satisfied.

As to DEMURRAGE, see that article.

When a ship or a principal part of it is not let out by charter-party, the owners contract with several merchants respectively for the conveyance of their goods. A ship so employed is called a general ship. The terms of the contract appear from the instrument called a bill of lading. [BILL OF LADING.]

The master has authority over the passengers as well as over the crew. A passenger may quit the ship, but while he remains on board, he is bound in case of necessity to do work that is required for the service of the ship and to fight in her defence. If he thwart the master in the exercise of his authority, or otherwise misconduct himself, he may be put under restraint or imprisoned. If a passenger feels himself aggrieved by the manner in which he has been treated, he may bring an action against the master, and it will be for the jury, under the direction of the judge, to say whether he has any ground for complaint. In addition to this general right of action, several statutes have been passed to regulate the conveyance of passengers. The 6 Geo. IV. c. 116, relates to ships carrying passengers from places in the United Kingdom to places out of Europe, and not within the Straits of Gibraltar. It regulates the proportion of passengers carried to the tonnage of the ship, provides security for the seaworthiness, cleanliness, &c., and proper storing of the ship, for the presence of a surgeon and medicines, for the delivery of a list of passengers to the collector of customs at the port of departure, and attaches penalties to a violation of the regulations which it contains. Ships in the service of the crown, or the post-master-general, or the East India Company, or bound to the Newfoundland fisheries or the coast of Labrador, are excepted from the operation of the act. As to the statutes concerning passengers who emigrate, see

EMIGRATION, p. 831. The 5 & 6 Wm. IV. c. 53, subjects the master to a penalty in cases of his improperly landing passengers at any place not contracted for, or wilfully delaying to sail; and provides for the maintenance of the passengers for 48 hours after their arrival at the destined port. The 4 Geo. IV. c. 88, regulates the carriage of passengers between Great Britain and Ireland. If a passenger fails to pay his fare, the master or owners have a lien on his luggage for the amount. It is the duty of those who have contracted to convey, to do everything and be provided with everything necessary for the safe and expeditious accomplishment of the voyage; and if, through their failure to perform these duties, any damage results to the merchant, they will be answerable for it. At the commencement of the voyage the ship must be sea-worthy, tight, staunch, and sufficient, and properly equipped with all necessary tackle. The ship must be also provided with a master and crew competent to command and work her, and also with a pilot when necessary, either from circumstances or from the law of the country. After the goods are loaded, they must be properly guarded; if they are stolen while the ship is lying in some place within a country, the master and owners are responsible.

It is the duty of the master, unless in case of any usage which relieves him from such duty, to provide things necessary for the lading of the vessel, and to stow away the goods so that they do not injure each other, or suffer from the motion or leakage of the ship. The master must procure and keep all documents, papers, clearances, &c., required by the authorities in respect of the ship and cargo; and he must abstain from taking or keeping on board contraband goods or false papers. He must wait during the time appointed for loading the vessel, and, if required, also during that appointed for demurrage. He must pay the charges and duties to which the ship is subject. The statutes 3 and 4 Wm. IV. c. 52, and 1 and 2 Vict. c. 113, contain the enactments relative to what is necessary to be done in respect of the custom-house regulations by ships carry-

ing goods from the United Kingdom beyond seas. When all things are prepared, the voyage must be commenced as soon as the weather is favourable. After the commencement of the voyage, the master is bound, without delays, deviations, or stoppages, to sail direct to the port of destination. But stress of weather, the appearance of enemies or pirates, or the presence of any urgent necessity, will justify him in breaking through this rule; and he ought to do so for the purpose of succouring another ship which he finds in imminent peril or distress.

If the ship is lost, or the goods injured during a deviation, without any of these grounds of justification, the owner and master will be answerable for the loss to the merchant, even if it does not appear to have been a necessary consequence of the deviation. If the ship during the voyage is so damaged that she is unable to proceed without repairs, the master may detain the cargo, if not of a perishable character, till the repairs are made. If the cargo is of a perishable kind, he ought to tranship or sell it, as may appear the most beneficial course. He may also in all cases, where the circumstances require it, exercise a discretion as to transshipping the cargo; as, for instance, when the ship is wrecked, or in imminent danger.

Hypothecation of a cargo, like hypothecation of a ship, is "a pledge without immediate change of possession." The party to whom the goods are hypothecated immediately acquires a right to have possession of them if the money advanced is not paid at the time agreed on. This power of the master under circumstances of urgent necessity to sell or hypothecate the goods must be exercised with great circumspection; and the exercise of it can only be justified when it is consistent with what would have been the conduct of a discreet and able man under the circumstances. Where goods have been hypothecated, the merchant is entitled, on the arrival of the ship at its destination, to receive at his option either the sum for which they were hypothecated, or their market price at that place. During the voyage the

master is bound to take every possible care of the cargo, and to do all things necessary for its preservation, and he and the owners will be answerable for all damage which might have been avoided by the exercise of skill, attention, and forethought. When the voyage is completed, the master must see that the ship is properly moored, and all things done relative to her which are required by the law or usages of the country. The statute 3 and 4 Wm. IV. c. 52, contains the regulations relative to customs to which it is necessary to conform in this country. Upon payment of freight and the production of bills of lading, the cargo must be without delay delivered to the parties entitled to receive it. In the case of a general ship, the usage often prevails for the master, before delivery, to take security from the merchants that they will pay their share of average after it shall have been adjusted. [AVERAGE.] If the freight due on any goods is not ready to be paid, the master may detain the goods, or any part of them. The goods may be detained either on board the ship or in any other safe place.

When the master is compelled, by an act of parliament, to land the goods at any particular wharf, he does not thereby part with the possession of the goods, and consequently does not lose whatever right he may have to detain them. If goods are sold by the custom-house officers before the freight is paid, the master is entitled to receive the first proceeds of the sale in discharge of the freight. In foreign countries, where any accidents have occurred to frustrate or interfere with the objects of the voyage, or any one of the parties to the contract feels himself aggrieved by the conduct of any other, it is customary to draw up a narrative of the circumstances before a public notary. This narrative is called a protest, and in foreign courts is admissible in evidence, even, as it would seem, on behalf of the parties by whom it is made. In our courts it is not admissible on their behalf, but is evidence against them.

Certain circumstances operate as an excuse to the master and owners for non-fulfilment of their contract. "The act of God" is understood to mean those acci-

dents over which man has no control, such as "lightning, earthquake, and tempest." The "perils of the sea," interpreted strictly, apply only to the dangers caused merely by the elements, but these words have received a wider application, and in litigated cases the jury, after hearing evidence as to the usage which prevails among merchants, will determine what interpretation has been intended to be given to them. Juries have determined that the taking of ships by pirates is a consequence of the perils of the sea; and the verdict has been the same where the loss was caused by collision of two ships without any fault being attributable to those who navigated either of them; and also where the accident was caused wholly by the fault of those on board another ship. But all cases in which the loss happens by natural causes are not to be considered as arising from the perils of the sea. If the ship is placed in a dangerous situation by the carelessness or unskilfulness of the master, and is in consequence lost, this is not a loss from the perils of the sea, although the violence of the elements may have been the immediate cause of it. If a ship is reasonably sufficient for the purposes of the voyage, the master will not be liable for a loss arising from the perils of the sea, because a ship might have been built strong enough to resist them. By the 26 Geo. III. c. 86, owners are relieved from losses proceeding from fire, and also from the robbery, theft, or embezzlement of "gold, silver, diamonds, watches, jewels, or precious stones," unless at the time of shipping them their quality and value are made known in writing to the master or owners. The "restraint of princes and rulers" is understood to mean a really existing restraint, not one which is anticipated, however reasonably or honestly. By the civil law, and also by the ancient common law of England, the owners, in case of their being liable for any loss to the shippers, were responsible to its full amount. By the laws, however, of most nations their responsibility is now limited to the value of the ship and freight. The first statute which was passed on the subject was 7 Geo. II. c. 15, which was followed by the 26 Geo. III. c. 86, and

the 53 Geo. III. c. 159 supplied some deficiencies in the former statute, limiting the responsibility still further than the first statute had done. The last statute applies only to registered ships, and as to them may be considered as containing almost all the law upon the subject. By this act the responsibility is limited to the value of the ship and freight. It contains also provisions for the distribution, by means of an application to a Court of Equity, of the recompense due to the several parties entitled, where more than one claim, and directions as to the mode of calculating the value of the ship and freight. It does not extend to vessels employed solely in inland navigation, and none of the acts apply to lighters or gabbers. In cases where ships receive injury from collision with each other, the maritime law, which is acted on in the Court of Admiralty, differs in one respect from the law of England. Where the collision has occurred without any fault on either side, as, for instance, from a tempest, each party must bear the injury which he has sustained. Where it happens wholly from the fault of one ship only, her owners are liable, as far as the value of the ship and freight, to which, by 53 Geo. III. c. 159, their liability is limited, for the amount of injury caused by their own conduct. Thus far the laws are in accordance with each other. If the collision has been caused by the faults of both ships, then, according to the law of England, each party must sustain his own loss. But by the maritime law the loss occasioned is after computation divided equally, and the owners of each ship sustain half.

By 1 & 2 Geo. IV. c. 75, s. 52, where damage has been done by a foreign ship, a judge has power to order the ship to be arrested, until the master, owner, or consignee undertake to become defendant in any action for the damage, and give security for the damages and costs sought to be recovered.

The merchant must use the ship only for lawful purposes, and not do anything for which it may be forfeited or detained, or the owners made liable for penalties. *In case of any violation of the agreement, by employment of the ship for purposes*

other than those contemplated, or failure to perform the terms as to lading, &c., the amount of compensation, in case of dispute, is determined, as the circumstances of the case may require, by a jury. The words *primage and average*, which appear in the bill of lading, mean, the first, a small sum paid to the master; the second, as there used, certain charges, varying according to the usage of different places, for towing, beaconage, &c.

When an agreement for conveyance is expressed in the general form, or when there is no actual agreement, but only one implied by law from the circumstances of the case, there results from it a duty upon the master and owners, firstly, to deliver the goods at the place of destination, whether the ship is hired by the voyage or by the month. It is only by the entire performance of this duty that they can entitle themselves to the payment of freight. The parties may, however, so express the contract that the payment of all or part of the freight may be made before or during the course of the voyage. Although perhaps in such case the word freight is used in a sense which does not properly belong to it; strictly speaking it means only money accruing for the conveyance of goods in consequence of their delivery at the place of their destination. Where a provision is made by the contract for payment of freight at the place of shipment, the question has arisen whether the meaning of the parties was that the sum should be paid at all events on delivery of the goods on board, whatever might afterwards befall them; or whether it was merely to point out the place of payment in case the freight should become due by reason of the arrival of the goods at the port of destination. In all such cases the intention of the parties must be interpreted by the jury from the words and circumstances of the contract, and the usages of the place where it was made. The same observation will apply to cases where money has been advanced by the merchant, and it is disputed whether the money is to be considered as a loan or part payment of the freight. The owners will not lose their right to freight by a mere interruption or suspension of the voyage not caused by their own fault, as by capture and resale

If the goods be ultimately delivered to the place of destination. Where the act of conveyance is by charter-party, under which the merchant has to pay a certain sum for the whole or principal part of a ship, that sum is payable even although he has not got enough for a full lading. If he undertakes to furnish a full cargo, he pays a certain sum per ton or per cubic foot in like manner under similar circumstances he is bound to pay for as many cargoes as the ship, or part hired, is capable of containing, even although he is not able to put on board any (at all); provided the ship has not been forced to come home without cargo, and this has not been caused by the act of the master or owner. In case of an action against him for such a failure to perform an agreement, the jury will ascertain under all the circumstances, is a compensation to the owners, although for the profit of the conveyance of these goods which may have been by other parties. If, under a contract to furnish a full cargo, the freight paid for per ton, &c., the merchant is obliged to furnish a full cargo, and he is sued from doing so by the master, merchant is still liable to pay for the cargo conveyed, and his remedy for the loss which he has suffered by such premium is by an action on the agreement with the master or owners. Where, under the terms of the agreement, the merchant has a right to refuse the delivery of goods until the freight is paid, he is bound to do so; and if he chooses to deliver the goods to the consignee or to the bill of lading, &c., and afterwards get the freight from them, the merchant who chartered the ship is released from his liability to pay the freight. If, however, under such circumstances the master does not insist upon the payment of the freight in cash, but takes an exchange in payment, the merchant is thereby discharged, and the owners will have no claim upon him if the bill is not paid. But if he takes the bill simply because he cannot get the freight in cash, the merchant-charterer remains liable. Payment of the freight by the charterer to the owners at

their request is an answer to a demand by the master, unless the agreement has been made under seal between the charterer and the master; and even in that case a court of equity would interfere to relieve the charterer from a subsequent demand by the master. A purchaser of goods, by the transfer to him of a bill of lading which contains a contract for delivery of the goods to the consignee or their assigns on payment of freight, is liable for the freight. But the mere receipt of the goods alone will not bind the receiver to pay the freight, especially if there be an express agreement under seal for the payment of freight between the charterer and the master or owners. The Court of Admiralty, where a question of freight arises before it in the case of captured vessels, will make an equitable arrangement between the owners and merchant. Where two nations are at war, and goods belonging to a subject of one of them, on board a neutral ship, are captured by the enemy, the goods become lawful prize, and the captors, so representing the original owners, are bound to pay the full freight for them. The full freight is due, since it is by reason of the act of the captors that the goods have not reached their destination. On the other hand, if the goods of a neutral are captured on board a hostile ship, and the captors convey the goods to their destination, they are entitled to freight. But no freight is payable where the goods on board a neutral ship consist of warlike stores, or where the neutral ship was engaged in a traffic not open to the neutral nation in time of peace. Freight is not recoverable where the voyage from any cause is illegal. If the goods which have been laden are duly delivered, the owners will not be deprived of their right to freight simply because the goods have been damaged during the voyage; but if this damage proceeds from any improper act or omission by the master or owners, they will be liable to make recompense to the merchant. The merchant in this country seems to have no right to abandon the goods in lieu of paying freight, if, although the ship did not arrive, they have been conveyed by other means to the place of destination, and if no charge save that of freight is claimed.

upon them. But if the ship has been wrecked, and the goods are saved, and afterwards conveyed to the place of their destination, the merchant may abandon them, and is not bound to pay the freight if any expense of salvage has been incurred. If, in the case of a general ship, or where, though a ship is chartered, the hire for her is to be paid at so much per ton, &c., the merchant is bound to pay the freight of such goods as may be delivered, even though they form a part only of the whole cargo. Where the whole or principal part of the ship is let to the charterer without reference to the quantity of goods to be laden, and a part of the goods are afterwards lost by perils of the sea, it seems to have been held that no freight will be due for the remainder.

There is some doubt, however, whether this authority would be followed unless such a conclusion arose from the construction of the agreement between the parties. If the ship, without any fault in the master or owners, becomes unable to complete her voyage, and the merchant receives the goods at some other place than the place of destination, he is bound, according to the maritime law, to pay freight for the portion of the voyage which has been performed. The principle which establishes the owner's right under such circumstances to freight for a portion of the voyage has been admitted in the courts of common law in this country, but that right "must arise out of some new contract between the master and the merchant, either expressly made or to be inferred from their conduct." In the latter case, there being no direct means of ascertaining the intentions of the parties, they must be collected from the circumstances of the case considered with reference to the general principle which obtains in the maritime law. In doing this it is obvious that the degree of benefit derived to the merchant must be taken into calculation, as well as the amount of time, labour, and expense bestowed by the owner; and, therefore, when it is said that freight is to be paid according to the portion of the voyage performed, it must not be understood that time and space are the only measures

for ascertaining the portion of the freight payable.

If the master unnecessarily sell the goods, and so prevent both himself from earning the whole freight, and the merchant from accepting the goods, the merchant is entitled to the entire produce of his goods without any allowance for freight. Where a portion of the voyage only has been performed, the merchant cannot be inferred to have contracted to pay freight for that portion unless he has accepted the goods at the place short of their destination. The principles upon which the Court of Admiralty, which possesses an authority over the ship and cargo, proceeds, differ from those of courts of common law. That court exercises an equitable jurisdiction; and where no contract has either been made, or can be implied, applicable to the existing circumstances, "considers itself bound to provide, as well as it can, to that relation of interests which has unexpectedly taken place, under a state of facts out of the contemplation of the contracting parties." (Lord Stowell, in the case of the *Friends v. Creighton*, 1 Edw., *Ad. Rep.*, 246.) If the ship has actually never commenced the voyage, the owners are not entitled to any payment whatever, although they may have incurred great expenses in lading her, and though her failure to commence the voyage is not attributable to any neglect or misconduct of theirs. Where the contract of hiring is for a voyage out and home, at so much to be paid monthly, &c., during the time the ship is employed, if by the terms of the contract the whole forms one entire voyage, no freight is due, unless the ship returns home, even though she may have delivered her cargo at the outport. But if the voyages out and home are distinct, freight will be earned on the delivery of the cargo at the outport.

Salvage is that reasonable compensation which persons are entitled to receive who save a ship or her cargo from loss by peril of the sea, which may be called civil salvage, or recover them after capture, which may be called hostile salvage. There is no fixed amount of salvage applicable to all cases. What is reasonable

can only be determined by a reference to the circumstances. Sir J. Nichol (3 *Hag. Ad. Rep.* 117) defines the ingredients in estimating a civil salvage service to be, "1st, enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives to save their fellow-creatures, and to rescue the property of their fellow-subjects; 2nd, the degree of danger and distress from which the property is rescued, whether it was in imminent peril, and almost certainly lost if not at the time rescued and preserved; 3rd, the degree of labour and skill which the salvors incur and display, and the time occupied; lastly, the value."

Unless in cases where the services have been trifling, the salvage is generally not less than a third, and not more than one-half of the property saved. If the parties cannot agree as to the amount, the salvors may retain the property until compensation is made; or they may bring an action, or commence a suit in the Admiralty Court, against the proprietors for the amount. In case the property is retained, the proprietors may, upon tender of what they think sufficient, demand it; and, if it is refused, bring an action to recover it, in which action the jury will determine as to the amount due. The costs of the action will be paid by the salvor or the proprietors, according as the amount tendered is or is not determined to be sufficient. The Court of Admiralty has jurisdiction in those cases only where the salvage has been effected at sea, or within high and low water mark. A passenger is not entitled to salvage for his assistance during the time he is unable to quit the ship. But if he remains voluntarily on board, he may recover salvage for the assistance which he has given. Though a king's ship is bound to assist a merchant-ship in distress, it still has a claim for recompense. If freight is in progress of being earned, and afterwards does become due, salvage is payable in respect of freight also. When proceedings for salvage have been commenced in the Admiralty Court, the defendants may tender by act of the court any sum which they consider sufficient, and the court will then enter upon

an inquiry, and determine as they think fit. If the sum tendered has been sufficient, the court may hold the salvors liable to the expenses of the proceeding. Several statutes have been passed providing for what is to be done in case of ships in distress, and for the purpose of regulating and facilitating the adjustment of demands of salvage. The 12 Anne, c. 18, s. 2, applies to cases where the assistance has been rendered by the persons mentioned in that act. The 26 Geo. II, c. 19, provides for the case of persons voluntarily rendering assistance. The 48 Geo. III, c. 150, and 1 & 2 Geo. IV, c. 76, are applicable to cases where assistance is given at the request of persons belonging to the ship. The statutes 53 Geo. III, c. 87, and 1 & 2 Geo. IV, c. 75, contain some enactments relative to the same subject. None of these acts apply to the Cinque-Ports. Upon application by the principal officer of a ship which is stranded or in danger of being so, the sheriffs, magistrates, and officers of the customs and other persons mentioned in the acts are bound to order the constables to call together persons and go to her assistance; and if any other ship is near, the officers of the customs or constables are required to demand assistance by men and boats from her chief officer, who is liable to forfeit 100*l.* to the chief officer of the ship in distress if he does not give assistance. All the persons employed are to be subject to the command of the master or other officers or owners of the ship which is in distress; and in case of their absence, the acts name a number of persons, beginning with the officer of customs, whom, in order according as they happen to be present, all persons are to obey. The power of the county (*posse comitatus*) may, if needful, be summoned by the sheriff, or in his absence by any magistrate, to enforce the execution of the statutes; and the person in command is authorised to use force, if necessary, to repel persons who improperly obtrude themselves. An account of the names of the ship, master, and owners, &c., of the cargo, &c., and of the circumstances of the distress, is to be taken by the officer of the customs on oath of the parties cognizant of the cir-

circumstances before a magistrate. This account is to be forwarded to the secretary of the Admiralty, and by him published in the next London Gazette. The persons who assist are to be paid by the master, seamen, or owners, a reasonable reward within thirty days; and if this is not paid, the ship or goods remain as a security in the hands of the officer of the customs. In case of disagreement as to amount, the nearest magistrate is to call a meeting of magistrates and some other officers named, who, or any five of them, are empowered to examine witnesses on oath, and to determine the amount of salvage. Provision is made for cases where no owner of the property appears. Perishable goods may be sold. No lord of a manor claiming a title to wreck can appropriate it until an account in writing of the property, and of the place where it was found, and it has been since deposited, has been sent to the vice-admiral or his agent, or, if none such reside within 50 miles, then to the Trinity-house, and a year and a day has elapsed after the delivery of the account. It is the duty of the vice-admiral or his agent to forward it to the secretary of the Trinity-house, who is bound to place it in some conspicuous situation. A variety of similar provisions are enacted relative to goods, parts of ships' furniture, &c., which are found or recovered, whether they may have belonged to ships in distress or not. The statutes which relate to the Cinque-Ports are 39 Geo. III. c. 122, s. 14; 1 and 2 Geo. IV. c. 75, s. 13; and 1 and 2 Geo. IV. c. 76.

In case of capture by the ancient maritime law the ship and goods became the absolute property of the captor. The old practice in this country was, when ships were in pay of the king, to divide in certain proportions, which varied at different times, the value of the capture between the king, the owners, and the captors. Where the capture was made by ships not in the king's pay, he received no share, but a small proportion was paid to the admiral. In the reign of George II. provision was for the first time made by various statutes for the restoration of the recaptured ship and cargo to the owners, and the rules of salvage were

fixed, varying according to the time that had elapsed since it. In the reign of George III. were done away with, and the rate of salvage was fixed at one-eighth of the value in the case of ships, and one-sixth for prizes where the recapture was effected by joint operation of king's and private ships, and the Court of Admiralty was to fix such salvage as was reasonable. Private ships are entitled to sales of recaptured ships which are taken from them. A ship, which has been used as a ship of war, is not to be restored if afterwards found that a ship is deserted by the enemy, and subsequently taken of, this is not a recapture, but the possession is entitled to be treated as in an ordinary case of a ship after the recapture the ship is restored and condemned, the right of prize is extinguished. Where the ship is in alliance with Great Britain, the common enemy and also captured by a British ship, no restitution on payment of salvage is made as in the case of the capture of a British ship; provided the ally chooses to adopt that rule in cases. If it does not, the same is acted upon in the courts of prize. If the ship of a neutral nation is captured by an enemy of Great Britain and be retaken by British ships, it is restored to the owners without salvage unless there is reason to suppose the circumstances the ship has been condemned in the capturing nation. Where it is such would have been the case, the subjects are entitled to salvage and merchandise taken from the ship, by 6 Geo. IV. c. 11, amount of one-eighth of the value.

4. As to the Employment of Merchant Seamen.—1 Wm. IV. c. 19 repealed all Acts which regulated the hiring of seamen, and the 5 & 6 Wm. IV. c. 11 repealed, with the exception of (q. 106), by the 1 & 2 Vict. c. 1, contains the present law relating

and for keeping a Register. This act contains sixty-four (this act regulates (s. 2, &c.) as of hiring with seamen; (s. 3) punishment of seamen for joining the ship, or absenting from it; (s. 9) forfeiture for (s. 11) the periods within a must be paid; (s. 15) sum of recovering wages not ex- pected pounds; (s. 17) provides being sent home when the in a foreign port; (s. 18) re- supply of medicines, lime or ; and other things necessary sh of the crew, and declares as there shall be a physician, apothecary on board; (s. 19, a for a general register and re- seamen; (s. 31) provides for of the effects of seamen who elsewhere than on board a Bri- leasing money or effects not ch ship; (s. 32, &c.) provide izing parish boys to the sea- 46) provides against masters charging seamen at any of her ices or plantations, or at place abroad, except as herein (s. 50) provides for seamen erty to leave any ship and ival service of her Majesty; ides for offences against the person of any subject of her of any foreigner, committed t or place, either ashore or of the dominions of her ma- master and crew; (s. 61) what cases this act shall not

can may recover his wages by in the common law courts or dmiralty courts. If in the s only remedy is against his ously; if in the latter, he d also against the ship itself. erty have only authority to with "a thing done upon the Ric. II. st. 2, c. 5; 13 Ric. Upon the strict construction of the latter of these statutes, master nor the seamen would to avail themselves of the pro- Admiralty Court, the claims ing founded, as they usually

ars, upon a contract made on shore, or in a port within a country. The remedy of the master against the owners is confined to an action against them personally in the ordinary law courts; but seamen may bring a suit, in which they all may join, in the Admiralty court; and they can either arrest the ship, or proceed personally against the owners or the master. Foreign seamen may also proceed in that court for wages due under the general maritime law, but not for those the claim to which is founded on the law of some particular country. In the case of British seamen, if the contract be made by deed containing terms and conditions different from those resulting in contem- plation of law from an ordinary service, the Court of Admiralty, which is con- sidered as unfit to construe such instru- ments, ceases to have jurisdiction. But in order to deprive the Court of Admi- ralty of its jurisdiction, the defendants ought to show that the special contract is in existence. If the court does not allow the plea, and cease to entertain the case, the Court of Queen's Bench will grant a prohibition. Where the ship itself is proceeded against, the claims of the sea- men for wages take precedence of all others. Proceedings in this court are subject to the same limitation of six years which applies to other like actions. When the action is brought in an ordinary court of law, it is conducted according to the rules of those courts; but the master or owners of the ship are in all cases of pro- ceedings for wages bound to produce the contract on which the claim is founded. (*Abbott On Shipping.*)

Marine Insurance.—The law of Marine Insurance constitutes an important part of the general law of shipping.

A maritime insurance is a contract by which one party, who is called the in- surer, in consideration of a premium agreed upon, undertakes to make good to another, who is called the insured or assured, the loss or damage which may befall his ship or goods on their passage from one place to another. The in- strument containing such a contract is called, in common with instruments for fire or life insurance, a policy. It is usually ~~not~~ under seal, unless the insurers are ~~not~~

incorporated company. Formerly the Royal Exchange Assurance Company and the London Assurance Company were the only companies for insuring ships, the legislature having given them a monopoly as against all except individual insurers. This monopoly has been abolished by 5 Geo. IV. c. 114. A great proportion of the business connected with the shipping insurance of this country is transacted at Lloyd's underwriters' establishment in the Royal Exchange, London. Insurers are commonly called underwriters, from the circumstance of their writing at the foot of the policy their names and the portion they are severally willing to take of the amount for which the merchant desires to insure.

The form of policy usually adopted is of ancient origin, and rather obscure in its phraseology, but most of its terms have acquired a certain meaning from judicial interpretation, and it is therefore found convenient to retain them.

The ordinary form is found in treatises on the Law of Shipping.

The conditions of the policy may be varied according to the particular agreement between the parties.

The words in the policy, "the said ship and goods and merchandises *shall be valued at*," make this a "valued policy;" that is, a policy which enables the merchant, in case of loss, to recover the stipulated amount without proof of the value of the things insured. A policy without words expressive of an agreement between the parties as to value, is called an open policy, and leaves the question of value open.

The subjects of marine insurance are, generally speaking, whatever is put in risk, as the ship, tackle, provisions, &c., cargo, freights, profits, and money lent at bottomry or respondentia. As for the purpose of stimulating the seaman to exert himself to the utmost for the safety of the ship, a rule has been established, that he is entitled to no wages unless the adventure be completed and the ship earn freight, so an insurance which would qualify that rule is declared illegal. A seaman therefore cannot insure his wages.

The subject matter of the insurance, whether the ship only, or goods, or

freight, must be accurately ascertained and so must the voyage, and the places at which the risk is to end.

The words "*lost or not lost*," in the policy, have the effect of rendering the underwriter liable, though the ship be lost before the insurance is entered, provided the loss were not then known to the assured.

Perils of the sea signify losses occasioned by winds and waves, rocks, &c. If the ship is run down and considered a peril of the sea, signifies the voluntary throwing overboard of any part of the ship over any justifiable reason, as either to prevent their falling into the hands of an enemy, or to save the rest of the cargo and ship. *Barratry* denotes any wrong in the master or seaman by which the owners of the ship or cargo are defrauded. Thus barratry may be committed by delaying the voyage with a false pretext, or by doing any act to the detriment of the insurance.

The loss or damage in every case is ascribed to the proximate cause. If the ship is checked in her route by sea-damage, and in consequence overtaken by an enemy and captured, this is considered a loss by capture.

The memorandum at the foot of the policy is inserted to protect the writer from minute liability in respect of perishable articles, as to which it is often difficult to say whether the damage was occasioned by intrinsic or extrinsic causes, the indemnity of the writer extending to the latter description of causes only. "*Warranted by average, unless general*," protects the underwriter from making good any loss short of a total loss, to the extent of the memorandum of the policy. A damage to any specific article is called a particular average, to which the memorandum of the policy extends, takes place where part of the cargo is lost, as the mast, or where part of the cargo has been thrown overboard for the common benefit, in which case the loss of the property sacrificed is entitled to contribution from all others who are

embarked in the adventure. This action is called general average; a policy will be vitiated by misrepresentation or concealment on the part assured of any fact material to a estimate of the risk; and the underwriter will be discharged from liability if the ship do not proceed on the voyage with that described, or if he be any unnecessary stopping or detention.

See, *On Marine Insurance*; McCulloch's *Commercial Dictionary*, art. 'Marine Insurance.'

The system of the Navigation Act, as framed, had its foundation during the statute; but the Act so called was (Chas. II. c. 18. This act declared no produce of Asia, Africa, or America should be imported into Great Britain in British ships, navigated by British subject, and having at least fourths of their crew composed of British seamen. It also laid higher duties on all goods imported from Europe, if they were imported in British ships.

To this act many persons have attributed the great growth of British shipping. When the American colonies became independent, their ships lost the privilege which they had when the colonies were colonies, and their shipping thus placed on the same footing as other foreign ships. The consequence was that American ships sailing to Great Britain came in ballast, while British ships carried merchandise both ways.

But restriction is a game that two can play at, and accordingly the United States placed British shipping on the same disadvantages in their ports as American shipping was under British ports. The consequence of this was that British ships sailed to America in ballast when they went to the United States to get a cargo, and American ships came to Great Britain in ballast when they wanted a British cargo. The result of the foreign produce in both countries accordingly paid double freight.

This lasted till 1815, when it was by treaty between Great Britain and the United States that the ships of the two countries should be placed on the same footing in the ports of Great

Britain and the United States, and all the discriminating duties were mutually repealed. In 1822, Mr. Wallace, president of the Board of Trade, introduced four bills, which made other important alterations. The 3 Geo. IV. c. 41 repealed certain statutes relating to foreign commerce, which were passed before the Navigation Act. The 3 Geo. IV. c. 42 repealed various laws that had been passed since the Navigation Act, and also that part of the Navigation Act which enacted that goods of the growth, produce, or manufacture of Asia, Africa, and America should only be imported in British ships, and that no goods of foreign growth, production, or manufacture should be brought into Great Britain from Europe in any foreign ship, except from the place of their production or from the ports from which they were usually brought, and in ships belonging to the country of production or accustomed shipment. The 3 Geo. IV. c. 43, permitted certain goods then enumerated to be brought to Great Britain from any port in Europe in ships belonging to the port of shipment. The 3 Geo. IV. c. 44, permitted the importation, subject to certain duties, into certain ports, of various articles from any foreign country in America or port in the West Indies, either in British vessels or in vessels belonging to the country or place of shipment, and such goods might be again imported to any other colony or the United Kingdom. The 3 Geo. IV. c. 45, permitted the exportation in British ships from any West India colony to any foreign port in Europe and Africa, of any goods that had been legally imported into the colony, or which were of its growth or manufacture; and it permitted the exportation of certain articles, enumerated in the act, in British ships to any such colony from any foreign port in Europe or Africa.

In 1823 Prussia retaliated, as the United States had done, which led Mr. Huskisson to propose the passing of what are called the Reciprocity Acts, 4 Geo. IV. c. 77, and 5 Geo. IV. c. 1, which empowered the king, by order in council, to authorize the importation and exportation of goods in foreign ships, from the

United Kingdom or from any other of his majesty's dominions, on the same terms as in British ships, provided it shall first be proved to his majesty and the privy council that the foreign country in whose favour such order shall be made shall have placed British ships in its ports on the same footing as its own ships. Since that time reciprocal treaties of navigation have been made with the following countries: Prussia, Denmark, Hanover, Oldenburg, Mecklenburg, Greece, Bremen, Hamburg, Lübeck, States of La Plata, Colombia, Holland, France, Sweden and Norway, Mexico, Brazil, Austria, Russia, and Portugal. That with the United States of North America, as already observed, dates from 1815.

Since the passing of the Reciprocity Acts the ship-owners have always cried out that those measures have ruined *their* interest. But they cannot possibly have injured any body else. On the contrary, the consumer has had the advantage of merchandize being carried at the cheapest rate that competition could produce. The following facts, however, show that since the Reciprocity Acts passed there has been an enormous increase in British shipping—a fact which proves that the investment of money in ships has been at least as profitable as in other branches of industry.

BRITISH SHIPPING.

Period from 1804 to 1823 under the Navigation Act and Restrictive System.

	Tonnage.
1804 . . .	2,268,570
1823 . . .	2,506,760
Increase, .	238,190
or 10 per cent.	

Period from 1823 to 1844 under the Reciprocity Acts and Free Trade System.

	Tonnage.
1823 . . .	2,506,760
1844 . . .	3,637,231
Increase, .	1,130,471
or 45 per cent.	

It further appears that the total tonnage of British and foreign ships entered inwards and outwards, exclusive of ships

in ballast, in the years 1832 and as follows:—

	British Tons.
1832 . . .	3,573,9
1845 . . .	6,617,1
Increase .	3,043,1
	Foreign Tons.
1832 . . .	1,927,3
1845 . . .	2,715,6
Increase .	1,688,2

It has been asserted that this increase of British shipping is in the numerous voyages of Co passenger-boats, especially of the Channel; but this cannot be so, those vessels clear in ballast, not carry cargoes, and are therefore included in the foregoing statement appears then that all parties, both and foreign, have gained by the City Acts, so far as the mere shipping is concerned; but the ship-owner has gained most.

must not forget the advantages to merchant, manufacturer, and so have gained by the cheaper cost of commodities, which is a necessary sequence of competition among nations.

A further examination of this important subject in all its details shows more conclusively the great advantage which British shipping and British industry have derived from the City Acts. (Porter, *Progress of the* sections iii. & iv. p. 158; an excellent article in the 'Economist' newspaper, March, 1846, also reprinted in the 'League' newspaper, March 23, 1846.)

Seamen in the Royal Navy in pressment.—It is stated by Black on the authority of Foster, "the practice of impressing and giving power to the admiralty for that is of very ancient date, and has uniformly continued by a series of precedents to the present time, when it concludes it to be a part of the law." As impressment is effected by the king's commission, the power of impressment belongs to the crown. (Rington, in his 'Observations on')

s. p. 334, 5th ed., shows that the act once to exercise the power of sending men for the land service also, even for his own private service, as case of goldsmiths. The legality of impressment is fully established, and the practice cannot be defended on the ground of the safety of the until it has been shown that seamen of the royal navy cannot be procured by means. The general rule is that all men are liable to impressment. There are several legal decisions as to the question of seamen, and who may be impressed.

Further seamen are induced to enter the royal navy by higher wages; and a foreign seaman who shall have been in a ship of war, a merchant ship, or a vessel for two years during a war, is deemed naturalized. The 7 & 8 Vict. c. 32, enacts that overseers of the poor or other persons having the authority of overseers of the poor, in and for every district, union, parish, township, or in the United Kingdom, may put an apprentice in the British merchant service, any boy who is twelve years of age and of sufficient health and strength, with his consent, who, or his father or parents is or are chargeable to be maintained by such district, &c., or shall beg for alms therein: the apprenticeship is to last till such boy attain the age of twenty-one years, or shall have completed seven years as an apprentice, whichever shall first happen. Section 33 of the same act provides for turning over, with the consent, of parish apprentices, who have been bound to a service of apprenticeship, to the sea-service, to be employed in the case of apprentices to the sea service under § 32, the period then remaining unexpired of their apprenticeship. Section 37 provides that all British ships of the burden of twenty tons and upwards, except pleasure boats, shall have apprentices in proportion to their tonnage, as in this act provided; all which apprentices are to be bound to British service for a time of being bound to British service above twelve and under seven years of age, and be duly bound for seven years at least. Section 50 provides, that nothing in this Act, or in any

agreement contained, shall prevent any seaman or person belonging to any ship or vessel whatever from entering or being received into the naval service of her majesty, nor shall any such entry be deemed a desertion from the ship or vessel, nor shall such seaman or other person thereby incur any penalty or forfeiture whatsoever either of wages, clothes, or effects, or other matter or thing."

The commerce of Great Britain gives regular employment to a vast body of seamen, and the habits and occupation of a large number of people on the sea-coast give them a relish and a capacity for sea service. With the great increase of the commercial navy of Great Britain, which has taken place of late years, and the prospect of still greater increase of commerce by the restrictions on trade being removed, we may always reckon on a sufficient number of seamen in the commercial navy to make up the deficiency in the royal navy in case of a sudden war. The apprenticeship system also is well devised to keep up a regular supply of young seamen. It is probable that ten or twenty thousand men might be at once drawn from the commercial navy for the royal navy on any emergency by offering them better wages, and thus the necessity of impressment might be removed. The amount of inconvenience that may be sustained by the merchant service by the withdrawal of a great number of seamen at once, is the same, whether the seamen are impressed or go as volunteers; but to the inconvenience arising from the actual withdrawal of seamen by impressment must be added the loss and inconvenience to the merchant service which may arise from seamen keeping out of the way in order to avoid being impressed.

SHIRE, from the Saxon *schyran*, to divide (whence also to *shear*), is the name of districts into which the whole of Great Britain and Ireland is divided. The word shire is in most cases equivalent to *county*, a name often substituted for it in Great Britain, and always in Ireland. The origin of this distribution of the country cannot be ascertained. In England it has been customary to attribute it to Alfred, upon the authority of a passage

in Ingulphus, the monk of Croyland, who wrote about a century and a half after the reign of that king. Asser however, the biographer of Alfred, does not mention this most important fact; and, in truth, shires were certainly known before Alfred's time. Sir Francis Palgrave shows them to be identical, in many cases, with Saxon states; thus Kent, Sussex, Essex, Norfolk, Suffolk, Middlesex, and Surrey were antient kingdoms: Lincolnshire, under the name of Lindesse, was an independent state, and Worcestershire (*Hwiccas*) was the jurisdiction of the bishop of Worcester. Another class of shires were formed out of large divisions, either for the sake of more easy management when the population of the particular district had increased, or for the sake of giving territory to an earl. Yorkshire was part of the kingdom of Deira, and Derbyshire of Mercia. Lancashire was made a county subsequently to the Conquest. On the other hand, some shires have merged in others: Winchester-shire is a part of Gloucestershire; and in the act for abolishing the palatine jurisdiction of the bishop of Durham (6 and 7 William IV., c. 19, s. 1) no less than five shires are mentioned, viz. Crainshire, Bedlingtonshire, Northamptonshire, Allertonshire, and Islandshire, which have long ceased to possess, if indeed they ever had, separate jurisdictions.

The uses of the division into shires may be learnt by an enumeration of the principal officers in each: 1, the lord lieutenant, to whom is entrusted its military array [*LORD LIEUTENANT*]; 2, the custos rotulorum, or keeper of the rolls or archives of the county [*CUSTOS ROTULORUM*], such as the county court rolls—this officer is appointed by letters-patent under the great seal, and is now always identical with the lord-lieutenant, except in counties of cities, where the high steward is usually custos rotulorum; 3, the sheriff, or, as he is often called, the high sheriff [*SHERIFF*]; 4, the receiver-general of taxes, who is appointed by the crown, and accounts to it for the taxes levied within his district—he also receives the county rates, and disburses them as the magistrates in quarter-sessions, or as any other competent authority,

direct; 5, the coroner [Con the justices of the peace, whose mission extends only to their own and who, assembled in session jurisdiction over many offences control over the county funds [§ 7, the under-sheriff, who is by and performs nearly all the sheriff; and 8, the clerk of an officer (almost always an appointed by the custos whose duty it is to file and cognizances, returning them, feited, to the sheriff to be levied NIZANCE]; he likewise prepares indictments to be tried at the assizes, and in general acts as of the justices in quarter-sessions this list of officers may be knights of the shire, or representatives of the county in parliament.

County rates are assessed by the justices in quarter-sessions according to estimates laid before [COUNTY RATE.]

The judicial tribunals are the assize court [ASSIZE]; the court, presided over by the sheriff until Magna Charta, a court of the hundred courts, and a [COURTS LEET.]

The principal subdivision is the hundred, a district whose origin bore relation rather to relation than to any uniform geographical limits. Mr. Hallam considers it been a district inhabited by families, and that a different prevailed in the northern from the southern counties; in proof of which contrasts Sussex, which contains hundreds, and Dorsetshire, which 43, with Yorkshire, which contains 26, and Lancashire, only 6, counties north of the Trent, and in Scotland, this subdivision called a wapentake. Kent is divided into five lathes, which are subdivided into hundreds. That the division of hundreds was known among the Romans even in the time of the Roman is inferred, but improperly, from passages in Tacitus (*De Moribus*) "ex omni juventute electos ad locant—Definitur et numerus."

dis pagis sunt." And again, "Censurabitur (principibus) adeunt ex plebe sen, consilium singul et auctoritas," "ut visi armati agant;" and hence man infers the identity of the *weapon* or military array (taking of weapons) the hundred court. Sir Francis gave says that the burgh was only enclosed and fortified resort, the sole of the inhabitants of the hundred, a subdivision of the hundred was the *ag*, composed, as it is alleged, of ten families, and having for an officer a riding man, a head constable.

Whether in the barbarous times to which it is attributed, so elaborate a seal as we have sketched could have existed, is at least most doubtful; but theory is that somewhere about the time of Edgar (A.D. 950), the county was divided into tithings, of which twelve is a hundred—for the Saxon hundred at 120, and hence perhaps the first use of the number 12 in our legal system. These hundreds were presided over by their decanus, or headship, or hundred-man, and were reckoned in the shire-mote; and this estate body, the shire, presided over by the earl and bishop or sheriff, conducted its own internal affairs.

There are three counties-palatine, the two of which had within his shire all fiscal and judicial powers of the king—Chester, created by William the Conqueror; the duchy of Lancaster, created by Edward III.—these two have long annexed to the crown; and Essex, heretofore governed by the king, but annexed to the crown by Henry in 1536. In the latter year, a part of the see of Ely, which had been a royal franchise, was annexed to the crown as Essex-shire in Northumberland had been in the reign of Elizabeth.

SIGN-MANUAL means, in its widest sense, the signature or mark made by a person upon any legal instrument to show his concurrence in it. Before the art of writing was so commonly practised as it is now, the sign-manual or signature was usually a cross, attested either by the seal of the party containing his armorial bearings, or by the signature of another party declaring to whom the mark

belonged. The latter indeed is still the practice with persons who cannot write.

Sign-manual now, however, is used to denote the signature of a reigning prince. It is usually in this country the prince's name, or its initial letter, with the initial of his style or title in Latin. Thus the sign-manual of George IV., when prince regent, was George P. R., or G. P. R.; that of the present queen is Victoria R., or V. R.

The royal sign-manual is usually placed at the top left-hand corner of the instrument, together with the privy seal; and it is requisite in all cases where the privy seal and afterwards the great seal are used. The sign-manual must be countersigned by a principal secretary of state, or by the lords of the treasury, when attached to a grant or warrant, and it must also be accompanied by the signet or privy seal. But where the sign-manual only directs that another act shall be done, as for letters-patent to be made, it must be countersigned by some person, though not necessarily by these great officers of state. The authenticity of the sign-manual is admitted in courts of law upon production of the instrument to which it is attached. (*Comyn's Digest*.)

SIMONY. [BENEFICE, p. 351.]

SIMPLE CONTRACT debts are those which are contracted without any engagement under the seal of the debtor or of his ancestor [DEED], and which are not of record by any judgment of a court. Money due for goods bought by the debtor is the most usual of simple contract debts; and the declaration against a defendant, in an action for goods sold, usually alleges that the defendant undertook (or contracted) to pay the plaintiff the sum due. Simple contract debts are the last which are payable out of a deceased person's estate, when the assets are insufficient.

SINECURE BENEFICE. [BENEFICE, p. 341.]

SINKING FUND. [NATIONAL DEBT.]

SLANDER consists in the malicious speaking of such words as render the party who speaks them in the hearing of others liable to an action at the suit of

the party to whom they apply. The mere speaking of the defamatory words instead of the writing of them is that which constitutes the difference between Libel and Slander. [LIBEL.]

Slander is of two kinds: one, which is actionable, as necessarily importing some general damage to the party who is slandered; the other, which is only actionable where it has actually caused some special damage. The first kind includes all such words as impute to a party the commission of some crime or misdemeanour for which he might legally be convicted and suffer punishment, as where one asserts that another has committed treason, or felony, or perjury. It also includes such words spoken of a party, with reference to his office, profession, or trade, as impute to him malpractice, incompetence, or bankruptcy; as of a magistrate, that he is partial, or corrupt; of a clergyman, that "he preaches lies in the pulpit;" of a barrister, that "he is a dunce, and will get nothing by the law;" and so on: or that tend to the disherison of a party, as where it is said of one who holds lands by descent, that he is illegitimate. Where a party is in possession of lands which he desires to sell, he may maintain an action against any one who slanders his title to the lands: as by stating that he is not the owner. With respect to the second kind of slander, the law will not allow damage to be inferred from words which are not in themselves actionable, even although the words are untrue and spoken maliciously. But if, in consequence of such words being so spoken, a party has actually sustained some injury, he may maintain an action of slander against the person who has uttered them. In such case the injury must be some certain actual loss, and it must also arise as a natural and lawful consequence of speaking the words. No unlawful act done by a third person, although he really was moved to do it by the words spoken, is such an injury as a party can recover for in this action. Thus, the loss of the society and entertainment of friends, of an appointment to some office, the breach of a marriage engagement caused by the slanderer's statement, are injuries for which a party may recover damages.

But he can have no action because the sequence of such statement certain sons, to use an illustration of Lordborough's, "have thrown him in horse-pond by way of punishment & supposed transgression."

With respect to both kinds of slander it is immaterial in what way the damage is conveyed, whether by direct statement or obliquely, as by question, epithet or exclamation. But the actual words must be stated in the declaration, upon the failure to prove them as true the plaintiff will be nonsuited at trial: it is not sufficient to state meaning and inference of the words. They will be interpreted in the sense which they are commonly used, where they are susceptible of two meanings, one innocent, the other defamatory; the innocent interpretation is to be preferred. Where words are equivocal in their meaning or their application, a parenthetical explanation may be used in the declaration. This is called *innuendo*. It may be employed to explain and define, but not to enlarge or alter meaning or application of the words spoken. The declaration must state publication of the words, that is, that they were spoken in the hearing of other persons maliciously. Two cannot bring one action of slander, except the case of husband and wife, or partners for an injury done to their trade; nor can an action be brought against two, except a husband and wife, where slanderous words have been spoken by the wife. Where the knowledge of extraneous facts is necessary to show application of the slander, these facts must be stated in the introductory part of the declaration.

In answer to an action of slander the defendant may plead that the words spoken were true, or that they were spoken in the course of a trial in a court of justice, and were pertinent to the issue, or formed the subject of a confidential communication, as where a party pleads *bona fide* states what he has said to be true relative to the character of a servant, or makes known facts for the purpose of honestly warning a person in whom he is interested. (Case

dion on the case for Defamation,' D. 2.)

SLAVE, SLAVERY, SLAVE ADE. The word slavery has various applications, but its complete meaning is the condition of an individual who is the property of another or others. Such is the condition of the "servi," or slaves among the Romans and Greeks; it is still that of the slaves in Eastern Africa, and that of the negro slaves in many parts of Africa and America. A degraded form of this condition exists in the case of the serfs in Russia and Poland, and of a similar class in India and some other parts of Asia. The slave and Polish serf is bound to the soil on which he is born; he may be sold with it, but cannot be sold away from it without his consent; he is obliged to work three or four days a-week for his master, who allows him a piece of land, on which he cultivates. He can marry, and his wife and children are under his authority till they are of age. He can bequeath his chattels and savings at his death. His life is protected by the law. The slaves of the Greek and Roman nations had none of these advantages, any more than the negro slave of our own country; he was bought and sold in the market, and was transferred at his owner's will; he could acquire no property; that he had was his master's; all the fruit of his labour belonged to his master, who could inflict corporeal punishment upon him; he could not marry; if he cohabited with a woman, he could be separated from her and his children at any time, and the woman and children sold. The distinction therefore between the slave and the serf is essentially one.

The villans (villani) of the middle ages were a kind of serfs, but their condition seems to have varied considerably according to times and localities. In the next article we treat only of the real slavery of ancient and modern times.

Slavery, properly so called, appears to have been, from the earliest ages, the custom of a large proportion of mankind in most every country, until times comparatively recent, when it has been gradually abolished by all Christian states, at least in Europe. The condition of slavery

constitutes one great difference between ancient and modern society. Slavery existed among the Jews; it existed before Moses, in the time of the Patriarchs; and it existed, and still continues to exist, in many parts of Asia. The "servants" mentioned in Scripture history were mostly slaves; they were strangers, either taken prisoners in war or purchased from the neighbouring nations. They and their offspring were the property of their masters, who could sell them, and inflict upon them corporeal punishment, and even in some cases could put them to death. But the Hebrews had also slaves of their own nation. These were men who sold themselves through poverty, or they were insolvent debtors, or men who had committed a theft, and had not the means of making restitution as required by the law, which was to double the amount, and in some cases much more. (*Exod. xxi.*) Not only the person of the debtor was liable to the claims of the creditor, but his right extended also to the debtor's wife and children. Moses regulated the condition of slavery. He drew a wide distinction between the alien slave and the native servant. The latter could not be a perpetual bondman, but might be redeemed; and if not redeemed, he became free on the completion of the seventh year of his servitude. Again, every fifty years the jubilee caused a general emancipation of all native servants.

The sources of the supply of slaves have been the same both in ancient and modern times. In ancient times all prisoners were reduced to slavery, being either distributed among the officers and men of the conquering army, or sold. When the early Aolian and Ionian colonies settled in the islands of the Aegean Sea, and on the coast of Asia Minor, it was a frequent practice with them to kill the adult males of the aboriginal population, and to keep the women and children. As, however, dealing in slaves became a profitable trade, the vanquished, instead of being killed, were sold, and this was so far an improvement. Another source of slavery was the practice of kidnapping men and women, especially young persons, who were seized on the coast, or enticed on board by the crews

of piratical vessels. The Phœnicians, and the Etruscans or Tyrrhenians, had the character of being men-stealers; and also the Cretans, Cilicians, Rhodians, and other maritime states. Another source was, sale of men, either by themselves through poverty and distress, or by their relatives and superiors, as is done now by the petty African chiefs, who sell not only their prisoners, but their own subjects, and even their children, to the slave-dealers. Herodotus (v. 6) states that some of the Thracian tribes sold their children to foreign dealers.

Among the Greeks slavery existed from the heroic times, and the purchase and use of slaves are repeatedly mentioned by Homer. The labours of husbandry were performed in some instances by poor freemen for hire, but in most places, especially in the Doric states, by a class of bondmen, the descendants of the older inhabitants of the country, resembling the serfs of the middle ages, who lived upon and cultivated the lands which the conquering race had appropriated to themselves; they paid a rent to the respective proprietors, whom they also attended in war. They could not be put to death without trial, nor be sold out of the country, nor separated from their families; they could acquire property, and were often richer than their masters. Such were the *Clarotæ* of Crete, the *Penestæ* of Thessaly Proper, and the *Helots* of Sparta, who must not be confounded with the *Periæci*, or country inhabitants of Laconia in general, who were political subjects of the Doric community of Sparta, without however being bondmen. In the colonies of the Dorians beyond the limits of Greece, the condition of the conquered natives was often more degraded than that of the bondmen of the parent states, because the former were not Greeks, but barbarians, and they were reduced to the condition of slaves. Such was the case of the *Kallirioi* or *Kallikurioi* of Syracuse, and of the native *Bithynians* at Byzantium. At *Heraclæa* in Pontus, the *Mariandyni* submitted to the Greeks on condition that they should not be sold beyond the borders, and that they should pay a fixed tribute to the ruling race.

The Doric states of Greece purchased slaves, but Athens, and other commercial states had a large number, who were mostly natives of barbarous countries. The slave population in Attica has been variously estimated to numbers, and it varied considerably at different periods; but appears that in Athens, at least in the height of its greatest power, they were more numerous than the freemen. A fragment of *Hyperides* preserved by *Suidas* (v. ἀπεργιστῶν), the number of slaves appears to have been at least 150,000, who were employed in the mines and mines of Attica alone. The poorer citizens had a slave for household affairs. The wealthier had as many as fifty slaves to each, and some had more. We read of philosophers keeping ten slaves. The private slaves belonging to families, public slaves belonging to the emperor or state. The latter were employed on board the fleet, in the docks and in the construction of public buildings and roads. At the sea-port of *Arginussæ* there were many slaves in the Athenian fleet, and the emancipated after the battle. *Athena* the Athenians granted to their slaves who served in the navy.

Slaves were dealt with like any property: they worked either on their master's account or on their own. In the latter case they paid a certain sum to their master; or they were let out to hire as servants or workmen, or to serve in the navy of the state, the master receiving payment for their services. Mines were worked by slaves, some of whom belonged to the lessee of the mine, and the rest were hired from private slave proprietors, to whom they paid a rent of so much a head, besides providing for the maintenance of themselves, which was no great matter. Some worked in chains, and many died from the effect of the unwholesome atmosphere. *Nicias* the elder had slaves in the mines of *Laurium* had several hundreds, whom he let to the contractors for an obolus a day. At one time the mining slaves murdered their guards, took possession of the mines, and were

owners of Sunium, and engaged mining country. (Fragment of an Constitution of Polybius; in the *Public Economy of Athens*, he thirty-two or thirty-three lots or small-cottages of Demos usually produced a net profit of six, their purchase value being 1; whilst his twenty state-cottages value was estimated at 12 ought in a net profit of 12 minas, says *Apolose Aphobos*, l.)

Slaves were so indispensable to the luxury, that none of the Greeks ever make any objection to us. Plaut. in his *‘Puerus Sene.’* only that no Greek should be so.

Romans and other ancient nations had slaves, as is proved by Valerius resulting against them, and by the tradition that it were runaway slaves of the 6. The Compendians had both of children previous to the conquest. But the Romans by act of national war carried an influx of slaves into Italy, a slave population at last nearly of the free labourers.

Roman system of slavery had its whole distinguished from us. The Greeks considered it as permanent in the race of man. (Aristotle, l.) The Romans admitted it that all men were originally free, l. tit. ii.) by natural law (and), and they asserted the masters over their slaves as the will of society, to the “jus” of the slaves were superior war, when the conquerors, selling them, as they might have sold for the purpose of selling to the “jus civile,” when a man sold himself. It was a rule of law that the selling of a slave through the medium of the “jus,” l. tit. 3.) Emancipation was frequent at Rome than in the unemancipated slave became a “libertus,” but whether he became citizen, a Latinus, or a depended on circumstances.

If the manumitted slave was above thirty years of age, if he was the Quiritarian property of his manumitter, and if he was manumitted in due form, he became a Roman citizen. (Gains, l. 17.) At Athens, on the contrary, emancipation from the dominion of the master was seldom followed by the privileges of citizenship even to a limited extent, and those privileges could only be conferred by public authority. It is true, that at Rome, under the empire, from the enactment of the *Lex Asilia Sentia*, passed in the time of Augustus, there were restrictions, in point of number, upon the master's power of freeing his domestics and enrolling them in the rank of Roman citizens; still in every age there was a prospect to the slave of being able to obtain his freedom.

Slaves were not considered members of the community: they had no rights, and were in most respects considered as things or chattels. They could neither sue nor be sued. When an alleged slave claimed his freedom on the plea of unjust detention, he was obliged to have a free prosecutor to sue for him, until Justinian (*Code*, vii. tit. l. 7, “De actionibus sublevis”) dispensed with that formality. Slaves had no marriage, that is, they could not contract a Roman marriage; their union with a person of their own rank was styled *contubernium*; and even the Christian church for several centuries did not declare the validity of slave marriages. At last the emperor Eusebius allowed slaves to marry and receive the blessing of the priest, and Africanus Canon law renewed the permission. As slaves had no marriage, they had not the parental power (*patria potestas*) over their offspring, no ties of blood were recognised among them, except with respect to incest and parricide, which were considered as crimes by the law of nature. Though slaves were incapable of holding property they were not incapacitated from acquiring property, but what they did acquire belonged to their masters. They were allowed to enjoy property as their own, “*pecunia*,” consisting sometimes of other slaves, but they held it only by permission, and any legal proceedings connected with it could only be conducted in the name of the master, who was the only legal

proprietor. Until the latter period of the republic, slaves and even freedmen were not admitted into the ranks of the army. In cases of urgent public danger, such as after the defeat of Cannæ, slaves were purchased by the state and sent to the army, and if they behaved well, they were emancipated. (Livy, xxii. 57, and xxiv. 14-16.)

They were not, however, denied the rites of burial, and numerous inscriptions attest that monuments were often erected to the memory of deceased slaves by their masters, their fellows, or friends, some of which bear the letters D. M., "Dis Manibus." Slaves were often buried in the family burying-place of their masters. The "sepulchretum" or burial-vault of the slaves and freedmen of Augustus and his wife Livia, discovered in 1726 near the Via Appia, and which has been illustrated by Bianchini and Gori, and another in the same neighbourhood also belonging to the household of the early Cæsars, and containing at least 3000 urns with numerous inscriptions, which have been illustrated by Fabretti, throw much light upon the condition and domestic habits of Roman slaves in the service of great families.

With regard to the classification and occupations of slaves, the first division was into public and private. Public slaves were those which belonged to the state or to public bodies, such as provinces, municipia, collegia, decuriae, &c., or to the emperor in his sovereign capacity, and employed in public duties, and not attached to his household or private estate. Public slaves were either derived from the share of captives taken in war which was reserved for the community or state, or were acquired by purchase and other civil process. Public slaves of an inferior description were engaged as rowers on board the fleet, or in the construction and repair of roads and national buildings. Those of a superior description were employed as keepers of public buildings, prisons, and other property of the state, or to attend magistrates, priests, and other public officers, as watchmen, lictors, executioners, watermen, scavengers, &c.

Private slaves were generally distributed into urban and rustic; the former

served in the town houses, and the latter in the country. Long lists of the different duties performed by slaves of each class are given by Pignorius, 'De Servorum apud Veteres Ministeriis,' Amsterdam, 1674; Popma, 'De Operis Servorum,' *ibid.*, 1672; and Blair, 'An Inquiry into the State of Slavery amongst the Romans,' Edinburgh, 1833, which is a very useful little book. For all the necessities of domestic life, agriculture, handicraft, and for all the imagined luxuries of a refined and licentious people there was a corresponding denomination of slaves. Large sums were occasionally paid for slaves of certain peculiar qualities, some of which we should consider at least useful. Eunuchs were always very dear; the practice of emasculation was borrowed by the Romans from the Asiatics, among whom it was a trade early as the time of Herodotus (viii. 10) it continued to the time of Domitian, who forbade it; but eunuchs continued to be imported from the East. A "morio," a fool, was sometimes sold for 20,000 sesterces, or about 160 pounds. Dwarf giants were also in great request. Marc Antonius paid for a pair of handsome youths 200 sesterces, or 1600 pounds. Actors and actresses and dancers were very dear, as well as females of great personal attractions, who were likely to bring in great gains to their owners by prostitution. A good cook was valued at 10 talents, or 772 pounds. Medical men, grammarians, amanuenses, anagnostæ, readers, and short-hand writers, were considerable request. With regard to ordinary slaves, the price varied from fifty to twenty pounds, according to abilities and other circumstances. During a victorious campaign, when thousands of captives were sold at once on the spot for the purpose of prize-money, to the dealers who followed the armies, the price sank very low. Thus in the case of Lucullus in Pontus (Plutarch, *Liv.* c. 14) slaves were sold for four drams or two shillings and sevenpence, and but the same slaves, if brought to the Roman market, would fetch a much higher price. Home-born slaves, distinguished by the name of "verna," in contradistinction to "servi empti," or "venales,"

were generally treated with ingratitude by their masters inasmuch as they had been brought *generally* considered due to the imported slaves, were as spoilt and troublesome. A number of slaves born in Italy appears at all times to be inferior to that of the imported.

In general the propagation of slaves was not much encouraged by the Romans, as those considered slaves cost more than those who were free.

There was a brisk trade in slaves on the coasts of Africa, the Red Sea, and Asia Minor. The Romans were at one time a great number, who were imported thence by Cilician pirates. (Strabo, *lib. 16*.)

The Illyrians procured slaves for the Italian market, and sought or stole from the barbarians in their neighbourhood. The supply of slaves was derived from Africa. In most countries the custom was for indigent parents to sell their children to slave-dealers. There are also in certain cases conversion, like the galley-slaves of the Romans.

The custom forbade prisoners of war, especially in Italy, to be sold as slaves; and this was the reason of the wholesale capture of captives by Sulla and the Romans. In the war between the Romans and Vitellius, Antonius, who led the army of the latter, at Cremona, ordered that none of the soldiers should be detained, upon which the soldiers began to kill those who were privately ransomed by their friends.

In the period of the empire freedom of low condition were glad to obtain subsistence by labour on the estates of the great landowners, to a continued residence for them and their families by a tacit agreement under the name of *coloni*, *hustici*, *Adscripti*, the phrase "*servi terre*," applied to them, shows their condition. They could

marry, which slaves could not. Though they bear a considerable resemblance to the serfs and villeins (villani) of the middle ages, yet there are some important points of difference and there is no evidence of any historical connection between the *Coloni* and Villani. The subject of the *Coloni* is discussed by Savigny, *Ueber den Römischen Colonat*; *Zeitschrift für Geschichte, Rechtswissenschaft*, vol. vi.

The customary allowance of food for a slave appears to have been four Roman bushels, "*modii*," of corn, mostly "*far*," per month for country slaves, and one Roman *libra* or pound daily for those in town. Salt and oil were occasionally allowed, as well as weak wine. Neither meat nor vegetables formed part of their regular allowance; but they got, according to seasons, fruit, such as figs, olives, apples, pears, &c. (Cato, *Columellis*, and Varro.) Labourers and artisans in the country were shut up at night in a house ("*ergastulum*"), in which each slave appears to have had a separate cell. Males were kept apart from females, excepting those whom the master allowed to form temporary connections. Columella adverts to some distinction between the *ergastulum* for ordinary labourers and that for ill-behaved slaves, which latter was in fact a prison, often under ground; but generally speaking the *ergastula* in the later times of the republic and under the empire appear to have been no better than prisons in which freedmen were sometimes confined after being kidnapped. The men often worked in chains. The overseers of farms and herdsmen had separate cabins allotted to them. Slaves enjoyed relaxation from toil on certain festivities, such as the *Saturnalia*.

The number of slaves possessed by the wealthy Romans was enormous. Some individuals are said to have possessed 10,000 slaves. Seneca possessed above 4000 domestic and as many rustic slaves. In the reign of Augustus, a freedman who had sustained great losses during the civil wars left 4116 slaves, besides other property.

A master had, as a general rule, the power of manumitting his slave, and this he could effect in several forms, by *Vin-*

dicta, Census, or by Testamentum. The Lex Aelia Sentia, as already mentioned, laid various restrictions on manumission. Among other things, it prevented persons under twenty years of age from manumitting a slave except by the Vindicta, and with the approbation of the Consilium, which at Rome consisted of five senators and five Roman equites of legal age (puberes), and in the provinces consisted of twenty recuperatores, who were Roman citizens. (Gaius, l. 20, 38.) The Lex Aelia Sentia also made all manumissions void which were effected to cheat creditors or defraud patrons of their rights. The Lex Furia Caninia, which was passed about A.D. 7, limited the whole number of slaves who could be manumitted by testament to 100, and when a man had fewer than 500 slaves, it determined by a scale the number that he could manumit. This Lex only applied to manumission by testament. (Gaius, l. 42, &c.)

In the earlier ages of the Republic, slaves were not very numerous, and were chiefly employed in household offices or as mechanics in the towns. But after the conquests of Rome spread beyond the limits of Italy the influx of captives was so great, and their price fell so low, that they were looked upon as a cheap and easily renewed commodity, and treated as such. The condition of the Roman slave, generally speaking, became worse in the later ages of the republic; and many of the emperors, even some of the worst of them, interfered on behalf of the slave. Augustus established courts for the trial of slaves who were charged with serious offences, intending thus to supersede arbitrary punishment by the masters; but the law was not made obligatory upon the masters to bring their slaves before the courts, and it was often evaded. By a law passed in the time of Claudius, a master who exposed his sick or infirm slaves forfeited all right over them in the event of their recovery. The Lex Petronia, probably passed in the time of Augustus, or in the reign of Nero, prohibited masters from compelling their slaves to fight with wild beasts, except with the consent of the judicial authorities, and on a sufficient case being made out against the slave.

Domitian forbade the mutilation of slaves. Hadrian suppressed the ergastula, private prisons for the confinement of slaves; he also restrained persons from selling their slaves to keep gladiators, or to brothel-keepers, as a punishment, in which case the opinion of a judge (judex) was required. Antoninus Pius adopted an old law of the Athenians by which the judge should be satisfied of a slave being treated by his owner, had power to the owner to sell him to some other person. The judge, however, was left to his own discretion in determining the measure of harshness in the worst case, to be a proper ground for judicial position. Septimius Severus forbade the forcible subjection of slaves to torture. The Christian emperors further in protecting the persons of slaves. Constantine placed the wilful owner of a slave on a level with that of a freeman, and Justinian confirmed this law, including within its provisions all slaves who died under excessive punishment. Constantine made also two laws, both nearly in the same words, to the forcible separation of the men and women of servile families by sale or parting property. One of the laws, dated 334, was retained by Justinian's code. The Church also powerfully interfered for the protection of slaves by threatening excommunication of owners who put to death their slaves without the consent of the judge, affording asylum within sacred places to slaves from the anger of their masters. A law of Theodosius authorized a slave who had taken refuge in a church to call for the protection of the judge, that he might present his case to his tribunal in order that the case might be investigated. After Christianity became the predominant religion in the Roman world, it was in various ways a beneficial influence upon the condition of the slaves, however interfering, at least for a time, with the institution of slavery. Even the laws of the Christian emperors which abolished the master's power of death over his slave were long retained. (Salvianus *De Gubernatione Dei*.)

was as that in the provinces of Gaul, in the fifth century, masters still fancied (they had a right to put their slaves to death. Macrobius (*Satur.*, i. 11)) was one of his interlocutors, though often, expatiate with great eloquence, the cruel and unjust treatment of slaves. In Spain, in the early period of Visigothic kings, the practice of putting slaves to death still existed, for in 'Para Judicium' (b. vi. tit. 5) it is stated that as some cruel masters in the vicinity of their pride put to death their slaves without reason, it is enacted that a public and regular trial shall take place previous to their condemnation. Civil laws and ecclesiastical canons made the sale of Christians as slaves Jews or Saracens and other unbelievers.

The northern tribes which invaded the Western empire had their own slaves, & were chiefly Slavonian captives, distinct from the slaves of the Romans or quarrel inhabitants. In course of time, however, the various classes of slaves fused into one class, that of the "adulterable," or serfs of the middle ages, and the institution of Roman slavery in its unmitigated form became obliterated. The precise period of this change cannot be fixed; it took place at various times in different countries. Slaves were imported from Britain to the Continent in the Saxon period, and the young English slaves whom Pope Gregory I. saw in the market at Rome were probably brought thither by slave-dealers. Giraldus Cambrensis, William of Malmesbury, & others accuse the Anglo-Saxons of buying their female servants and even their children to strangers, and especially the Irish, and the practice continued after the Norman conquest. In the case of a council held at London, A.D. 1102, it is said, "Let no one from henceforth presume to carry on that wicked trade by which men in England have hitherto sold like brute animals," (*Urkun's Concilia*, i. p. 383.)

but although the traffic in slaves ceased among the Christian nations of Europe, continued to be carried on by the Moors across the Mediterranean in the age of the Crusades. The Venetians

supplied the markets of the Saracens with slaves purchased from the Slavonian tribes which bordered on the Adriatic. Besides, as personal slavery and the traffic in slaves continued in all Mohammedan countries, Christian captives taken by Musselmans were sold in the markets of Asia and Northern Africa, and have continued to be sold till within our own times, when Christian slavery has been abolished in Barbary, Egypt, and the Ottoman empire, by the interference of the Christian powers, the emancipation of Greece, and the conquest of Algiers by the French.

With the discovery of America, a new description of slavery and slave-trade arose. Christian nations purchased African negroes for the purpose of employing them in the mines and plantations of the New World. The natives of America were too weak and too indolent to undergo the hard work which their Spanish task-masters exacted of them, and they died in great numbers. Las Casas, a Dominican, advocated with a persevering energy before the court of Spain the cause of the American aborigines, and reprobated the system of the "repartimientos," by which they were distributed in lots like cattle among their new masters. But it was necessary for the settlements to be made profitable in order to satisfy the conquerors, and it was suggested that negroes from Africa, a more robust and active race than the American Indians, might be substituted for them. It was stated that an able-bodied negro could do as much work as four Indians. The Portuguese were at that time possessed of a great part of the coast of Africa, where they easily obtained by force or barter a considerable number of slaves. The trade in slaves among the nations of Africa had existed from time immemorial. It had been carried on in ancient times; the Garamantes used to supply the slave-dealers of Carthage, Cyrene, and Egypt with black slaves which they brought from the interior. The demand for slaves by the Portuguese in the Atlantic harbours gave the trade a fresh direction. The petty chiefs of the interior made predatory incursions into each other's territories, and sold these

captives, and sometimes their own subjects, to the European traders. The first negroes were imported by the Portuguese from Africa to the West Indies in 1503, and in 1511 Ferdinand the Catholic allowed a larger importation. These, however, were private and partial speculations; it is said that Cardinal Ximenes was opposed to the trade because he considered it unjust. Charles V., however, being pressed on one side by the demand for labour in the American settlements, and on the other by Las Casas and others who pleaded the cause of the Indian natives, granted to one of his Flemish courtiers the exclusive privilege of importing 4000 blacks to the West Indies. The Fleming sold his privilege for 25,000 ducats to some Genoese merchants, who organised a regular slave-trade between Africa and America. As the European settlements in America increased and extended, the demand for slaves also increased; and all European nations who had colonies in America shared in the slave-trade. The details of that trade, the sufferings of the slaves in their journey from the interior to the coast, and afterwards in their passage across the Atlantic—their treatment in America, which varied not only according to the disposition of their individual masters, but also according to different colonies,—are matters of notoriety which have been amply discussed in every country of Europe during the last and present centuries. It is generally understood that the slaves of the Spaniards, especially in Continental America, were the best treated of all. But the negro slaves in general were exactly in the same condition as the Roman slaves of old, being saleable, and punishable at the will of their owners. Restrictions, however, were gradually introduced by the laws of the respective states, in order to protect the life of the negro slave against the caprice or brutality of his owner. In the British colonies, especially in the latter part of the last century and the beginning of the present, much was done by the legislature; courts were established to hear the complaints of the slaves, flogging of females was forbidden, the punishment of males was also limited within certain

bounds, and the condition of the population was greatly ameliorated by the advocates of emancipation who held the principle of slavery as being unchristian; and they also appealed to experience to show that a being cannot be safely trusted at the mercy of another.

But long before they attempted to emancipate the slaves, the efforts of the philanthropists were directed to the slave traffic, which desolated the coast, and encouraged the maltreatment of the negroes in the colonies, by an unlimited supply, and making the planter's interest to keep up the trade in the natural way. The attention of mankind was first effectually attracted to the horrors of this trade by Mr. Clarkson. His labours, with those of the zealous men, chiefly Quakers, who early joined him, prepared the way for Mr. Wilberforce, who brought the subject before parliament in 1788, though, after his notice, the motion to his accidental illness, was first brought forward by Mr. Pitt. Mr. Wilberforce was throughout the great parliamentary leader in the cause, powerfully supported in the country by Thomas Clarkson and others, as Richard Phillips, George Richardson, William Allen, all of the Society of Friends, Mr. Stephen, who had been in the West Indies as a barrister, and Z. Macaulay, who had been governor of Sierra Leone, and had also resided in Jamaica. A bill was first carried in 1807 by Sir W. Dolben to regulate the slave trade until it could be abolished, and in some degree diminished the horrors of the middle passage. But the question of abolition was repeatedly defeated until 1804, when Mr. Wilberforce first carried the bill through the Commons; it was thrown out in the Lords, and next year was again lost even in the Commons. Meanwhile the capture of the colonies, especially the Dutch, during the war, frightfully increased the demand for slaves, by opening these settlements to British capital; and at one time the whole importation of slaves by British vessels amounted to nearly 60,000, of which about a third was for the

measures. At length, in 1805, an Act prohibited the slave-trade in the conquered colonies. Next year a bill introduced by Lord Grenville carried a bill through, prohibiting British subjects from engaging in supplying either foreign or the conquered colonies. A bill introduced by Mr. Fox, the last year in any part in public debate, failed in 1806, pledging the Government to the total abolition of the trade. In 1807, an Act, adopted by the Lords, and brought in by Lord Howick (Earl Grey), and being passed, received the royal assent on 23rd March, 1807. This Act prohibited slave-trading from and after January 1, 1808; but as it only imposed pecuniary penalties,

that something more was put down a traffic the gains were so great as to cover all the loss. In 1810 the House of Commons, on the motion of Mr. Brougham, unanimously resolved itself early next session to prevent "such daring the law;" and he next year introduced a bill making slave-trading felony, and fourteen years' transportation with hard labour, laws relating to the slave-trade consolidated, and it was further made piracy, and punishable on conviction within the Admiralty. In 1837 this was amended, so that transportation for life, by the number of capital offences.

Since the Felony Act of 1837, the British colonies have entirely ceased any concern in this traffic, and subjects have engaged in the traffic capital has been employed in other branches of foreign trade.

At the time of Wellington, while America was at war, in 1814, used every effort to restore the prohibition of the traffic in the French West Indian colonies, in commercial jealousy of England all his attempts. The

first French law abolishing the slave-trade was a decree issued by Napoleon on the 29th of March, 1815, during the Hundred Days, after his return from Elba. It prohibited any vessel from fitting out for the trade, either in the ports of France or in those of her colonies; and the introduction or sale in the French colonies of any negro obtained by the trade, whether carried on by French subjects or foreigners. The influence of Great Britain was again strenuously exerted at the peace in 1815, to obtain the concurrence of foreign powers in the abolition; and the object has been steadily kept in view by this country, and every opportunity of forwarding it taken advantage of, down to the present time. The consequence has been that now nearly all the powers in Europe and America have passed laws, or entered into treaties, prohibiting the traffic.

To the General Treaty signed by the representatives of Austria, France, Great Britain, Portugal, Prussia, Russia, Spain, and Sweden, assembled in Congress at Vienna, on the 9th of June, 1815, was annexed, as having the same force as if actually inserted, a Declaration, signed at the same place by the Plenipotentiaries of certain of the powers, on the 8th of February preceding, to the following effect:—that, seeing several European governments had already, virtually, come to the resolution of putting a stop to the slave-trade, and that, successively, all the powers possessing colonies in different parts of the world had acknowledged, either by legislative acts, or by treaties or other formal engagements, the duty and necessity of abolishing it; and that by a separate article of the late treaty of Paris (20th May, 1814), Great Britain and France had engaged to unite their efforts at this Congress of Vienna to induce all the powers of Christendom to proclaim its universal and definitive abolition; the members of the Congress now declared, in the face of Europe, that they were animated with the sincere desire of concurring in the most prompt and effectual execution of this measure by all the means at their disposal. And this Declaration was renewed by the Plenipotentiaries of Austria, France, Great Brit-

tain, Prussia, and Russia, assembled in Congress at Verona, in resolutions adopted in a conference held on the 28th of November, 1822; in which, however, it is admitted that, "notwithstanding this declaration, and in spite of the legislative measures which have in consequence been adopted in various countries, and of the several treaties concluded since that period between the maritime powers, this commerce, solemnly proscribed, has continued in this very day; that it has gained in activity what it may have lost in extent; that it has even taken a still more odious character, and more dreadful from the nature of the means to which those who carry it on are compelled to have recourse."

The following will be found, we believe, to be a correct and complete list of the treaties and conventions for the suppression of the slave-trade that have been made by this country with other states since the general peace:—

In 1814, with France, by Additional Articles to the Definitive Treaty of Peace signed at Paris 30th May (engaging that the slave-trade should be abolished by the French government in the course of five years); and with the Netherlands, by treaty of London, 13th August. Its abolition had also been stipulated in the Treaty of Kiel, concluded with Denmark on the 14th of January.

In 1815, with France, by Additional Article to Definitive Treaty signed at Paris 26th November (by which the two powers, having each already, in their respective dominions, prohibited, without restriction, their colonies and subjects from taking any part whatever in the slave-trade, engage to renew their efforts, through their ministers at the courts of London and Paris, for its entire and definitive abolition); and with Portugal, by Treaty signed at Vienna 22nd January (referring to Treaty of Alliance concluded at Rio de Janeiro 19th February, 1810, in which the Prince Regent of Portugal had declared his determination to adopt the most efficacious means for bringing about a gradual abolition of the slave-trade; and making it now unlawful for any of the subjects of the crown of Portugal to purchase slaves, or to carry on

the slave-trade, on any part of the coast of Africa: to the northward of the equator).

In 1817, with Portugal, by *Cosme* signed at London 29th July (prohibiting universally the carrying on of the slave-trade by Portuguese vessels bound for any port not in the dominions of his Most Faithful Majesty; and restricting it in other circumstances); with Portugal, by Separate Article, signed at London 11th September (referring to arrangements to be adopted "as soon as the total abolition of the slave-trade, for the subjects of the crown of Portugal, shall have taken place"); with Spain, by Treaty signed at Madrid 23rd September (by which the Catholic Majesty engages that the slave-trade shall be abolished throughout the entire dominions of Spain on the 20th of May, 1820, and that in the mean time it shall not be lawful for any of the subjects of the crown of Spain to purchase slaves, or to carry on the slave-trade, on any part of the coast of Africa to the north of the equator, or in vessels bound for any port not in the dominions of his Catholic Majesty; and by which the restriction under which the trade may be carried on in other circumstances are specified); and with Radama, king of Madagascar and its dependences, by Treaty signed at Tamatave 23rd October.

In 1818, with the Netherlands, by Treaty signed at the Hague 24th May (specifying restrictions under which the reciprocal right of visitation and search is to be exercised).

In 1820, with Madagascar, by Additional Articles signed at Tamatave 11th October.

In 1822, with Muscat of Maund, by Treaty signed at Muscat 16th September; with Netherlands, by Explanatory and Additional Articles, signed at Brussels 31st December; and with Spain, by Explanatory Article signed at Madrid 10th December.

In 1823, with Netherlands, by Additional Article signed at Brussels 21st January; with Portugal, by Additional Articles signed at Lisbon 15th March; and with Madagascar, by Additional Articles signed at Tamatave 31st May.

In 1824, with Sweden, by Treaty

no, 6th November (arranging at right of visitation by the ships of the two countries).

90, with Brazil, by Treaty of Janeiro, 23rd November (renews separation of that empire from the stipulations of the treaties with the latter power).

91, with France, by Convention 30th November (stipulating mutual search, within certain seas, after ships of war to be fixed for each nation by special act).

93, with France, by Supplemental Convention of Paris, 22nd March (regulating the right of visitation authorized cruisers).

94, with Denmark, by Treaty of Copenhagen, 26th July (containing the cession of his Danish Majesty to the crown between Great Britain and of 1831 and 1833); with Sardinia, by Treaty of Turin, 8th August (regulating accession of that power to conventions); and with Sardinia, final Article, signed at Turin, 18th August (respecting place of land-groves found in vessels with Sardinia).

95, with Spain, by Treaty of Madrid, 25th June (abolishing slavery in part of Spain henceforward, and finally, in all parts of the island, and regulating a reciprocal right of visitation); and with Sweden, by Addendum to Treaty of 1824, signed at Stockholm 15th June.

97, with Tuscany, by Convention of Florence 24th November, cession of the Grand Duke of Tuscany to French Conventions of 1831); with Hanse Towns, by Convention at Hamburg, 9th June (effect); and with Netherlands, final Article to Treaty of 1818, signed at The Hague 7th February.

98, with Kingdom of the Two Sicilies, by Convention signed at Naples 22nd January (containing accession of an Majesty in French Conventions of 1831 and 1833).

99, with Republic of Venezuela, by Convention signed at Caracas 15th March (regulating the traffic in slaves,

so far as it consists in the conveyance of negroes from Africa; expressing the determination of Venezuela to preserve in force the provisions of a law passed in February, 1825, declaring Venezuelans found engaged in that trade to be pirates and punishable with death, and regulating a mutual right of visitation); with Chile, by Treaty signed at Santiago 18th January; with Uruguay, by Treaty signed at Montevideo 18th July; with Argentine Confederation, by Treaty signed at Buenos Ayres 24th May; and with Hayti, by Convention signed at Port-au-Prince 23rd December.

In 1840, with Bolivia, by Treaty signed at Sucre 25th September; and with Texas, by Treaty signed at London 16th November.

In 1841, with France, by Treaty signed at Paris 20th December, which however the French government afterwards refused to ratify; with Mexico, by Treaty signed at Mexico 24th February; and with Austria, Prussia, and Russia, by Treaty signed at London 20th December.

In 1842, with the United States of North America, by Treaty signed at Washington 9th August (stipulating that each party shall maintain on the coast of Africa a naval force, carrying in all not less than eighty guns, "to enforce separately and respectively, the laws, rights, and obligations of each of the two countries for the suppression of the slave-trade; the said squadrons to be independent of each other," but "to act in concert and co-operation, upon mutual consultation, as exigencies may arise"); with the Argentine Republic; and with the Republic of Hayti.

In 1842, with Portugal, by Treaty signed at Lisbon 2nd July.

In 1846, with Brazil; and with France, by a Convention signed at London on the 26th of May (by which each power is to keep up an equal naval force on the western coast of Africa, and the right of visitation is to be exercised only by cruisers of the nation whose flag is carried by the suspected vessel).

The History of the Abolition is to be found in the work under that title by T. Clarkson (edition 1834), and the state of the law, as well as the treatment of slaves

practically in the colonies, is most fully treated of in a work on that subject by Mr. Stephen. The writings of the late Sir John Jeremie also contain much useful information on the condition of slavery in the British colonies just before the Emancipation Act. T. Clarkson's other works on the nature of the traffic, which first exposed it to the people of this country, were published in 1787.

The slave-trade was suppressed, but slavery continued to exist in the British colonies. In 1834 the British parliament passed an act by which slavery was abolished in all British colonies, and twenty millions sterling were voted as compensation money to the owners. This act (5 & 4 Wm. IV. c. 73) stands prominent in the history of our age. No other nation has imitated the example. The emancipated negroes in the British colonies were put on the footing of apprenticed labourers. By a subsequent act (1 Vic. c. 19) all apprenticeships were to cease after the 1st of August, 1840, but the day was anticipated in all the West Indian colonies by acts of the colonial legislatures. Slavery exists in the French, Dutch, Spanish, and Portuguese colonies, and in the southern states of the North American Union. The new republics of Spanish America, generally speaking, emancipated their slaves at the time of the revolution. As the slave population in general does not maintain its numbers by natural increase, and as plantations in America are extended, there is a demand for a fresh annual importation of slaves from Africa, which are taken to Brazil, Cuba, Puerto Rico, and Monte Video. In a recent work, 'The African Slave-Trade and its Remedy,' by Sir T. Fowell Buxton (who, after Mr. Wilberforce's retirement, took a most active part in parliament on the subject of slavery), it is calculated, apparently on sufficient data, that not less than 150,000 negro slaves are annually imported from Africa into the above-mentioned countries in contravention to the laws and the treaties existing between Great Britain and Spain and Portugal, the local authorities either winking at the practice or being unable to prevent it. Since the slave-trade has been declared to be illegal, the sufferings

of the slaves on their passage Atlantic have been greatly owing to its being necessary for slave-traders to conceal their by cooping up the negroes in compass, and avoiding the shores; they are often thrown over a chase. There is a considerable life incident to the seizing of force in the hunting excursions groves, and in the wars between tribes of the interior for the making captives. There is a long march to the sea-coast; the middle passage is reckoned on as at one-fourth of the cargo; and this, there is a further loss, also in what is called the "seasoning" slaves. The Portuguese and flags have been openly used, with vivance of the authorities, for on the slave-trade. The Spanish flag has been used, though less openly, greater caution, owing to the between England and Spain which abolishes the slave-trade on the Spain. A mixed commission Spaniards and British exists in the try slavers; but pretexts are being to elude the provisions of it. There seems indeed to be a difficulty in obtaining the satisfaction of all Christian powers in the slave-trade effectually, able certain that in all but the Portuguese Spanish settlements the traffic almost entirely ceased.

Besides the slave-trade on the there is another periodical export slaves by caravans from Souda Barbary states and Egypt, the number of which is variously at between twenty and thirty. There is also a trade carried in subjects of the Imams of Muscat, port slaves in Arab vessels from and other ports of the eastern Africa, to Arabia, Persia, India and other places. In a despatch Zanzibar, May, 1839, Captain Co states the slaves annually sold market to be 50,000. The Port also export slaves from their on the Mozambique coast, to Go and their other Indian possessions.

by a law of the Koran, which, however, is always observed in all Mohammedan countries, no Mussulman is allowed to make use of his own faith. The few negro kingdoms of Soudan supply slave-trade at the expense of their subjects or neighbours, whom they sell to the Moorish traders. Mohammedanism will probably never suppress this of their own accord.

There is a considerable internal slave-trade in the United States of North America. Negroes are bred and sold in Maryland and Virginia, and some other of the southern states, and carried to the fertile lands of Alabama, Louisiana, and other southern states.

It is maintained by some that the African slave-trade cannot be effectually put to by force, and that the only chance of ultimate suppression is by civilizing and Africa, by encouraging agriculture and legitimate branches of commerce, and at the same time spreading education and Christianity; and also giving the protection of the British.

In those negroes who would avail themselves of it. It is certain that if the countries will not exert themselves, abolition must be postponed to this or that period. The Africans sell men and women they have no other means of procuring European commodities, and there is no doubt that one result of the slave-trade is to keep central Africa in the state of barbarism.

The amount of the slave population existing in America is not easily ascertained. By the census of 1835 Brazil owned 2,100,000 slaves. The slaves of Cuba, in 1825, were, according to the report, about 160,000. In the United States the number of slaves was 2,487,355 by the census of 1840, which is 478,324 more than the number according to the census of 1830.

Efforts for the ultimate and universal abolition of slavery exist in England, France, and the United States, and they look their Reports; and a congress

held in London, June, 1840, of delegates from many countries to confer upon means of effecting it. The American city has formed a colony called Liberia near Cape Mesurado, on the west

coast of Africa, where negroes who have obtained their freedom in the United States are sent, if they are willing to go. The English government has a colony for a similar purpose at Sierra Leone, where negroes who have been seized on board slave-ships by English cruisers are settled.

SMALL DEBTS. [INSOLVENCY; REQUESTS, COUNTERS, &c.]

SMUGGLING is the clandestine introduction of prohibited goods; or the illicit introduction of goods by the evasion of the legal duties. Excessive duties present a temptation to men to evade them; and the law loses a great part of its moral influence when it first tempts to violation of it and then punishes the offence. In parts of a country where a "free trade" is extensively carried on, the smuggler is rather a popular person than otherwise; in some countries, as in Spain, still more than in England. His neighbours do not usually regard his mode of acquiring a livelihood disgraceful, but rather look upon him as a benefactor who supplies them with necessities and luxuries at a cheap rate. "To pretend," says Adam Smith, "to have any scruple about buying smuggled goods would in most countries be regarded as one of those pedantic pieces of hypocrisy which, instead of gaining credit with anybody, serve only to expose the person who pretends to practise them to the suspicion of being a greater knave than the rest of his neighbours." This is probably rather too strongly expressed; but many persons even attach a fictitious value to goods which have been smuggled, on account of their cheapness and supposed excellence; and indeed articles which have duly passed through the custom-house are frequently offered for sale as contraband. It is the crimes and the moral evils which are the offspring of smuggling that are to be dreaded rather than smuggling itself. The true remedy is a wise tariff. It annihilates a traffic which an ingenuity can ever put down; for all experience proves that so long as a profit can be made by smuggling sufficiently high to counterbalance the necessary risk, it will not fail to flourish. The decrees of Berlin and Milan, instead of annihilating commerce, only forced it

into extraordinary channels. Silk from Italy, for example, instead of being received in England by the most direct means, often arrived by way of Archangel and Rhyms; in the former instance being two years, and in the latter twelve months on its passage. The slave-trade is another instance of the impossibility of putting a stop to any traffic which is a source of great profit. The slave-traders of the Havana gave from 35 to 40 per cent. as a premium of insurance on their African risks; but at this rate the insurance companies did not realise a profit, though they sustained no serious loss. This proves that nearly two out of every three adventurers are successful; and as one out of three would at least have covered all loss, the difference makes a profit of at least cent. per cent. to the slave-dealer. Until this profit be reduced, the slave-trade cannot be effectually suppressed. (Turnbull's *Cuba*, 1846.) Whenever duties exceed 30 per cent. ad valorem, it is impossible to prevent a contraband trade.

We have only to examine the tariff of any country to know if smuggling is practised; and if a bad system of commercial policy has been long pursued, there the smuggler will be found. The contrabandists of Spain figure in novels and tales of adventure. In no country is the illicit trade so general and extensive. The exports to Gibraltar from England considerably exceed a million sterling per annum, and a very large proportion of British goods is introduced by smugglers into the interior. Mr. Porter states (*Progress of the Nation*, ii. 111) that nearly the whole of the tobacco imported into Gibraltar, amounting to from 6 to 8 million lbs. per annum, is subsequently smuggled into Spain, where the article is one of the royal monopolies. On the French frontier the illicit trade is equally active.

The vicinity of France and England, and the injudicious character of their respective tariffs, have encouraged smuggling to a large extent on both sides of the Channel. Spirits, tea, tobacco, and silk goods, and more particularly brandy, from the high duties imposed on it in this country, have constituted the most im-

portant articles of smuggling from France to England. The total amount evaded in 1831 by the smuggling of French goods into the United Kingdom was estimated to exceed 2000 cistives of tobacco, "whole as which are sometimes introduced French bonding warehouses in land." (*Report on the Communications between France and England*, Mr. Poulett Thomson (late Lord of the Treasury) and Dr. Bowring.) English goods are also largely smuggled into France. The extensive land frontier of England and the offices for collecting duties in inland towns, give rise to peculiarities in the smuggling of French goods. It is not sufficient to be clandestine on the coast, as in England it has to pass the local customs, the barriers of the large towns, and adds greatly to the difficulty and cost of smuggling. It is stated that the premium on landing English goods on the French coast was 55 per cent. the barriers of Paris 65 per cent. within the walls 10 per cent. ad valorem making in all 75 per cent.; the same on cotton goods being 65 per cent. on English goods are chiefly introduced from the Belgian frontier, and the smugglers their depôts at Cambrai, St. Omer, Ypres, Tournay, Mons, and other in the adjacent departments. A Report of 1831, already quoted, states that in that year the amount of goods smuggled into France by the frontier exceeded 2,600,000 lbs. but if the ports on the Channel be included (of which no estimate is given) this amount would be greatly increased. Cotton-twist is the most important article in the illicit trade. Cotton-yarn once lodged in the manufacturer's house, cannot be seized, and the consequence of the article being once in the progress of manufacturing in France, the government is unable to reduce the duty, in some degrees at its illicit introduction.

The nature of the frontier of this country is bounded necessarily by considerable influence on the cost of its tariff. It would, for example, be nearly impossible to prevent the

of British goods into the United States on the Canadian frontier, if the cost of importation were excessive.

In 1822 the cost of preventing smuggling in England was enormous. The Revenue Service and the Coast Block were organized for this purpose, and aided by a fleet of fifty-two revenue boats. In 1822 and 1823 there were stationed on the English coast 52 vessels, 1,351 boats engaged in smuggling. For the half-year ending April, 1823, the cost of this department of the public service amounted to 327,145*l.*, and the seizures were valued at 67,000*l.* The Coast Guard consisted of 1500 officers and men of the royal navy, who were engaged on shore under the orders of the Admiralty; and the Coast Guard was under the authority of the Board of Customs. In 1822 upwards of 161,000*l.* had been expended in building cutters for officers and men of the Coast Guard in 18 and 1823. Lord Compton estimated the total annual cost of protecting revenue in 1831 at from 700,000*l.* to 800,000*l.*

For several years frequent conflicts took place between the officers of the Customs and smugglers, who were generally aided by the country-people. In 1822 there were 116 persons under confinement in England, and 64 serving in the navy as a penalty for smuggling. The counties on the Scottish border were at one period rapidly becoming infested by smuggling, the duties on spirits being much higher in England than in Scotland. In two years 160 indictments were laid in the counties of Shetland and Cumberland for smuggling spirits. The duties being raised more nearly to an equality, these ceased on the border; and the quantity of spirits charged with duty in Scotland rose from 24 million gallons in 1822, nearly six million gallons in 1825. The reduction of the duties on silks, tea, and other articles, has done more to reduce smuggling than all the efforts of the revenue officers aided by a large armed force. In 1841 the number of persons under confinement in England for offences under the Customs laws was 56; all for offences under the *smuggling* laws, with two ex-

ceptions; in Ireland there were none under confinement.

The direct cost incurred for the protection of the Customs revenue was as follows in 1840:—Harbour vessels, 7250*l.*; Cruisers, 112,545*l.*; Preventive Water Guard, 349,474*l.*; Land Guard, 19,008*l.*; total, 494,568*l.* The Board of Customs employs cruisers for the protection of the revenue collected under its authority, the cost of which amounted to 54582*l.* in 1840; and also a force in Ireland called the Revenue Police, whose maintenance in the above year cost 42,095*l.* The total charge for collecting and protecting the Customs and Excise revenue of the United Kingdom was 2,309,611*l.*; namely, 1,286,353*l.*, or 5*l.* 8*s.* 8*d.* per cent, for the Customs; and 1,023,258*l.*, or 5*l.* 10*s.* 11*d.* per cent, for the Excise. In 1835 the number of persons employed in the department of the Customs was 11,500; and in the Excise 6072. The present Acts relating to smuggling are 3 & 4 Wm. IV. c. 53, and 4 & 5 Wm. IV. c. 13.

BOCCAGE (more correctly *sewage*) in its original signification, according to Bracton, Littleton, and others, is service rendered by a tenant to his lord by the soc (sok) or ploughshare. The term was afterwards extended to all services rendered which were of an ignoble or non-military character, and were fixed in their nature and quality. The certainty of the services to be rendered distinguished *sewage* tenure from tenure in chivalry, or by knight's service, on the one hand, and from tenure in pure villenage by arbitrary service, on the other; and therefore Littleton says, § 118, "A man may hold of his lord by fealty [*FEALTY*] only; and such tenure is a tenure in socage; for every tenure which is not a tenure in chivalry is a tenure in *sewage*."

Socage is said by old writers to be of three kinds: socage in frank tenure; socage in ancient tenure; and socage in base tenure. (*Old Tenures*, 125, 126; *Old Tenures Brevium*, title *Gerds*.) The second and third kinds are now called respectively tenure in ancient demesne and copyhold tenure. The first kind is called free and common socage, to distinguish it from the two others, though as the term

socage has long ceased to be applied to the two latter, socage and free and common socage now mean one and the same thing.

Besides fealty, which the tenant in socage, like every other tenant, is bound to do when required, the tenant in socage, or, as he was formerly called, the socager or sockman, is bound to give his attendance at his lord's court-baron, if the lord holds a court-baron either for a manor [MANOR] or for a seignior in gross. A tenant in socage may hold by fealty only (Littleton, § 130), for fealty is a service. If the tenant in socage holds by fealty and certain rent to pay yearly, &c., the lord shall have of the heir of his tenant as much as the rent amounts unto which he payeth yearly. This payment on the death of a tenant is a relief. Many of these rents are of little value, as a pound of pepper, a number of capons or hens, or a pair of gloves (Littleton, § 128).

Both forfeiture and escheat are incident to tenure in socage, as they were also to tenure by knight's service. [ESCHEAT.] In that species of socage tenure which is called gavelkind [GAVELKIND] there is no forfeiture.

Wardship is also incident to this tenure. But this incident is not, as formerly in knight's service, a benefit given to the lord, but a burthen imposed on the infant's next friend of full age, who must however be a person not capable of inheriting the estate upon his young kinsman's death.

By the mutual consent of lord and tenant, socage tenure might have been converted into tenure by knight's service, or tenure by knight's service into tenure in socage. It sometimes happened that the tenant held by knight's service of a lord who held in socage; and, more frequently, that a tenant held in socage of a lord who held by knight's service.

In particular districts some of the incidents of tenure by knight's service were by custom annexed to the tenure in socage. Thus in the diocese of Winchester the lord claimed the wardship and marriage of his socagers.

Before the abolition of feudal burthens by the Commonwealth, confirmed upon the Restoration by 12 Car. II. c. 24, te-

nants in socage were bound to pay 20s. upon every 20l. of annual value, as an aid for making the lord's son a knight, and the same for marrying the lord's eldest daughter. This tenure was also subject to the payment of fines upon alienations.

By the above statute, the provisions of which were extended to Ireland by the Irish act of 14 & 15 Car. II. c. 19, tenure by knight's service was abolished, and all lands, with the exception of ecclesiastical lands held in free alms [FRANKALMOIGNE], were directed to be held in free and common socage, which, with the limited exception in favour of lands held in frankalmoigne, is now the universal tenure of real property throughout England and Ireland, and those colonies which have been settled by the English.

It is true that a large portion of the soil of all those countries is held by leaseholders, and in England also by copyholders; but the freehold of the land held by leaseholders and copyholders is in their lords or lessors, who hold that freehold by socage tenures. (On socage tenures, see Coke on Littleton, § 117, &c., and the notes in Butler's edition.)

SOCIAL CONTRACT, or ORIGINAL CONTRACT. Blackstone

(Com. i. p. 48) writes as follows:—"Though Society had not its formal beginning from any convention of individuals actuated by their wants and fears, yet it is the *sense* of their weakness and imperfection that keeps mankind together, that demonstrates the necessity of this union, and that therefore is the solid and natural foundation as well as the cement of civil society. And this is what we mean by the original contract of society; which though perhaps in no instance has ever been formally expressed at the first institution of a state, yet in nature and reason must always be understood and applied in the very act of associating together—namely, that the whole should protect its parts, and that every part should pay obedience to the will of the whole; or in other words, that the community should guard the rights of each individual member, and that, in return for this protection, each individual should submit to the laws of the community; without which submission of all it were

possible that protection could be very extended to any." Blackstone in various passages denies "that there was a time when there was no such thing as society, either natural or civil;" in the passage just quoted he denies it "had its formal beginning from convention of individuals." The necessity of the "union" is demonstrated in the sense of weakness and imperfection which keeps mankind together; this (it is not exactly clear what) is to be means by the original contract, which he further proceeds to tell us, though in no instance has ever been fully expressed." Bentham, in his argument on 'Government' (chap. i.), in a very amusing manner exposed absurdities and contradictions which vitiate Blackstone's chapter 'Of the origin of Laws in General.'

Locke's doctrine is more distinctly stated (*Essay on Civil Government*, §. 2. 'Of the beginning of Political Society'). He says that "men being by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent." By *can* he does not mean to say that it may not be that one man shall be subjected to the political power of another, but that *cannot* properly or justly be subjected without his consent; which appears from it follows:—"Whosoever therefore takes a state of nature into a society must be understood to give up the power necessary to the ends for which they unite in society, to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by their agreeing to unite into one political society, which is all the compact that is made between the individuals that enter into or make up a commonwealth, and thus that which begins and actually constitutes any political society, is nothing but the consent of any number of free and capable of a majority to unite and associate into such a society. And this act, and that only, which did or could be beginning to any lawful government in the world." This doctrine is open to no objection. The conclusion is to

the origin of "lawful government" by implication contains the notion that some governments are not lawful, whereas all men must and do admit that all governments which can maintain themselves are governments, and the term lawful is not applicable to that power which can declare what is lawful. The two objections which Locke mentions as being made to the theory are, 1.—"That there are no instances to be found in story of a company of men independent and equal one amongst another, that met together, and in this way began and set up a government." 2. That "it is impossible of right that men should do so, because all men being born under government, they are to submit to that, and are not at liberty to begin a new one." Locke replies to both objections with considerable ingenuity, but there are few political writers at present who will be inclined to consider his answer conclusive.

Hume, in his 'Essay on the Original Contract,' admits that "the people, if we trace government to its first origin in the woods and deserts, are the source of all power and jurisdiction, and voluntarily, for the sake of peace and order, abandoned their native liberty, and received laws from their equal and companion. The conditions upon which they were willing to submit were either expressed or were so clear and obvious that it might well be esteemed superfluous to express them. If this, then, be meant by the original contract, it cannot be denied that all government is at first founded on a contract, and that the most antient rude combinations of mankind were formed entirely by that principle." And yet he adds, "in vain are we sent to seek for this charter of our liberties—it preceded the use of writing and all the other civilised arts of life." Consequently we cannot trace "government to its first origin," and therefore we cannot tell how Government originated. But we do know, as Hume shows, that all governments of which we can trace the origin have been founded in some other way than by an original contract among all the members who are included in them. Hume further says, "that if the agreement by which savage men first associated and

conjoined their force be meant (by the term Original Contract), this is acknowledged to be real; but being so ancient, and being obliterated by a thousand changes of government and princes, it cannot now be supposed to retain any authority. If we would say anything to the purpose, we must assert that every particular government which is lawful, and which imposes any duty of allegiance on the subject, was at first founded on consent and a voluntary compact." This is the real question. Those who found what they very incorrectly term "lawful government" on an original contract, must show us the contract. So far Hume's objection is good, and whether there was an original contract or not is immaterial. The question is, what was the origin of any particular government? Those who maintain that any particular government originated in a contract of all the persons who, at the time of the formation of the government, were included in it, cannot prove their case. Those who deny the original contract can show that many particular governments have originated "without any pretence of a fair consent or voluntary subjection of the people."

But an original contract, such as Hume admits, is as far removed from the possibility of proof as the origin of any particular government by virtue of a contract; nor have we any record of savage men associating to form a government. If one set of savage men did this, others would do it, and there must have been many original contracts, which contracts are the remote origin of all particular governments; but inasmuch as that origin of any particular government, which we do know, was not made by contract, and did not recognise the original contract, such government is unlawful, as those who contend for the theory of an original contract would affirm, or ought to affirm, if they would be consistent. Thus the practical consequences of the doctrine of an original contract, if we rigorously follow them out, are almost as mischievous as the doctrine that every particular government was founded on an original contract. It is true that the theory of an original contract of savage people being

the foundation of government is a mere harmless absurdity, when at the same time we deny that any particular government has so originated, provided we admit that such particular government is not to be resisted simply because it is not founded on contract. Those who maintain that all existing governments rest on no other foundation than a contract, affirm that all men are still born equal—that they owe no allegiance to a power or government, unless they are bound by a promise—that they give up their natural liberty for some advantage—that the sovereign promises him these advantages, and if he fails in the execution, he has broken the articles of engagement, and has freed his subjects from all obligations to allegiance. "Such, according to these philosophers, is the foundation of authority in every government; and such is the right of resistance possessed by the subject" (Hume). This is a good exposition of the consequences that follow from the theory of every government being founded on contract.

Governments, as we now see them, exist in various forms, and they exist by virtue of their power to maintain themselves. This power may be mere force in the government and fear in the governed. Combined with the power of the government there may be the opinion of a majority in favour of the government, or of a number sufficiently large and united to control the rest; and this opinion may be founded either on the advantage which such number or majority conceive that they derive from the actual form of government, or the advantage which they and all the rest are supposed to derive from such government. The opinion of a considerable number may be strong enough to overthrow a government or to maintain it, but in either case it is not the opinion of all.

The real origin of government lies in the constitution of man's nature. Man is a social animal, and cannot exist out of society. He is of necessity born in a society, that is, a family, the smallest element to which we can reduce a man. He who requires not to live in a society, says Aristotle, must be a beast or a god (Politik. 1. 2). The nature of man con-

work union with the other sex, himself is not a complete constitution of their nature; one must unite; and this is the case of a family. Those who make account of the creation clear statement of the origin and the father's authority is accordance with the constitution of nature as the union of the father and the mother. The various which the descendants of a family might be detached from their seats are infinite; and the which they might be formed into societies are infinite also, even no account of them, it speculate what the precise have been. Man, says Aristotle, is a political animal; and he has an impulse to po-

He therefore follows the nature by living in political society as he obeys it by uniting with a woman. The form of any government, and the mode in which have been established, are not the essentials, of political society, the real foundation of which is the consent of the individuals who compose them. But inasmuch as every man estimates the value of any government by its fitness for the accidents of its formation to that for which purpose it exists. Its origin has been as obscure, perceived, as the origin of political societies in such endless world. Nobody supposes originated in universal consent of people who follow them, or majority who follow them, why they follow them. How the origin of customs can be of government.

of men living in a state of nature proceeding to form a society has apparently derived force from the condition of nature. There are perhaps people who hold to have no government, that among some savages and of union except that of this is not each family is

ruled by its head, like the families of the Cyclopes (Aristotle, *Politik.* i. 1), so long as the head can maintain his dominion. This state, if it exists anywhere, is perhaps what some people call a state of nature; but it is in fact a very imperfect state of nature, for the perfect state of nature is a political society, because it is that state to which the nature of our constitution impels us as the best. The savage in his lowest condition bears the same relation to the man who is a member of a political body that the man who has not his senses bears to the man who has his full understanding. Both the savage and the idiot are imperfect men; they are the deviations from the course of nature.

SOCIETIES, ASSOCIATIONS. The great increase of Societies or Associations for all kinds of purposes is characteristic of the present condition of Europeans in Europe and of Europeans who have settled in other parts of the world. Association for particular objects is analogous to the great associations of political societies, but with this difference, that their object is something particular, and that they are really established and exist by the consent of the individuals who compose them. [SOCIAL CONTRACT.]

Societies have been formed and exist for nearly every variety of object. There are societies for objects scientific and literary, sometimes called academies; for objects religious and moral; and for objects which are directly material, but in their results are generally beneficial to the whole of mankind. There are societies for objects which the members consider useful, but which other people consider to be mischievous. Generally, in this country, it may be stated that any number of individuals are permitted to contribute their money and their personal exertions for any object which is not expressly forbidden by some statute, or which would not be declared illegal by some court of justice, if the legality of such association came in question before it. The objects for which persons may and do associate are accordingly as numerous as the objects which individuals may design to accomplish, but cannot accomplish without uniting their efforts.

In some cases the State has aided in the formation of such associations, and has given them greater security for carrying their purposes into effect, as in the case of savings' banks and friendly societies. Sometimes the State grants a charter of incorporation to associations, which in many respects enables the body to transact its matters of business more conveniently. Sometimes the State perceives that it can extract some revenue from persons who associate for particular purposes, as in the case of fire-insurance offices, for all persons who insure their property in them (except farming stock, &c.) must pay the state 200 per cent. on the sum which they pay to secure their property against the accidents of fire. [INSURANCE, FIRE.] If a man should think it prudent to invest a part of his annual savings in a life insurance, the state makes him pay a tax on the policy. A great many associations of individuals for benevolent, scientific, and such like purposes are left to direct their associations according to the common principles of law.

If lists were made of all the associations in Great Britain and Ireland, including those which are purely commercial, with an account of their objects, income, and applications of income, we should have the evidence of an amount of activity and combination that was never equalled before. How far it might be prudent to give to all associations for lawful purposes greater facilities for the management of their property and the making of contracts, subject to certain regulations as to registration of their rules and approval of their objects, is a matter well deserving of the attention of the legislature.

SOLDIER is a term applied to every man employed in the military service of a prince or state, but it was at first given to such persons only as were expressly engaged for pay, to follow some chief in his warlike expeditions. Caesar mentions a band of 600 men called "solduril," who bound themselves to attend their leader in action and to live or die with him (*De Bello Gallico*, iii. 22), but it does not appear that they served for pay. By some the word has been thought to come from "*solidus*," the name of a coin under the

Roman empire, which may have been received as the payment for the service.

In the article ARMY, a sketch is given of the origin of standing armies in Europe and in England. The present article treats of the condition of the English soldier in modern times. Little change seems to have taken place in the pay of the English soldiers between the times of Edward III. and Mary. During the reign of this queen the daily pay of a captain of heavy cavalry was 10s., and of a cavalry soldier 1s. 6d. The pay of a captain of light cavalry was 6s., and of a soldier 1s. The pay of a captain of foot was 4s., of a lieutenant 2s., of an ensign 1s., and of a foot soldier 8d.; a halbardier and a hackbutter, on horseback, had each 1s. daily. In the times of Elizabeth, James I., and Charles I., the pay of the officers was a little raised, but that of a private foot-soldier was still 8d. per day; during the civil wars the pay of the latter was 9d., but in the reign of William III. it was again reduced to 8d. At that time the pay of a private trooper was 2s. 6d., and that of a private dragoon was 1s. 6d., including in both cases the allowance for the horse. The pay of the private soldier in later times has by no means been raised in the inverse ratio of the value of money.

While armour was in general use, the common soldiers of England were distinguished only by scarfs or by badges, on which were impressed the arms of their several leaders; but in the reign of Henry VIII. something like a uniform was worn, and it appears that the colour of the men's upper garments was then generally white; the soldiers in the king's particular service only, had on their coats a representation of the cross of St. George. However, on an army being raised in 1544, the soldiers were ordered to wear coats of blue cloth bordered with red. White cloaks marked with red crosses continued to be the uniform of the troops during the reign of Queen Mary; but in the time of Elizabeth the infantry soldiers wore a cassock and long trowsers, both of which were of Kentish grey; the cavalry were furnished with red cloaks reaching down to the knee and without sleeves. Grey coats, with breeches of the same colour,

and to be the uniform as late as the time of William III., but soon lost time red became the general for the coats of the British infantry.

The condition of the first soldiers now has been mentioned in the *ARMY*: with respect to those of old in the times of Henry VIII. and of VI., we have a more favourable view; for Sir John Smith, in the preface to his 'Military Instruction', observes that the order and discipline of the armies during the reigns of kings were so good, that the men, when discharged, were never seen to beg or to go begging under the pretence that they had been soldiers, as, even, they now most commonly do. In his 'Discourses on the Use and Effects of Weapons' (1590) he states that, in his time, the custom of troops serving abroad, instead of being regulated for the conduct of men, gave a few laws artfully traduced to the soldiers from demanding pay, but in no way prohibiting them from deserting the people of the country; he adds that they esteemed those to be the best who, by robbery, lived longest without pay. He complains that while the commanders galled in appearance, and had their full of gold, the soldiers were with-mour, ragged, and barefooted; and when money was to be received, used to send the men on desperate risks, in order that they might obtain pay of those who were killed. He, that in the summer before the of Leicester went over (to Holland) commanders devised a manner of paying soldiers which had never before used of; instead of money, the men were paid in presents, under pretence that now was how to make purchases; but money, the food supplied being inferior kind, great part of the salary was put in their own pockets. says that Queen Elizabeth, on being told of these abuses, caused the practising in payment to be abolished. subsequently, even in the time of E. I., the pay both of officers and soldiers was frequently postponed

for years, and was sometimes entirely withheld. Such injustice no longer exists in the British army: the pay of the soldier is assured to him by the nation; and a well-appointed commissariat provides, as far as possible, for his wants while in the field.

Till lately the condition of a private soldier, both in this country and on the Continent, was unfavourable for inspiring a love of the service. Obligated to be furnished with good clothing and to preserve a becoming appearance, that which remained of his scanty pay scarcely sufficed for procuring the food necessary for his support. In his barracks he was subject to numerous petty details of duty, which prolonged weariness and disgust; and, at all times, to the restraints of discipline, which deprived him of the recreations enjoyed by other men. The soldier also had often the mortification to find himself despised for his poverty by persons with whom men of his condition are accustomed to associate. These disadvantages are now however in a great measure removed; and the pay of the soldier suffices to afford him the means of obtaining the comforts of life in a degree at least equal to those which are enjoyed by an ordinary peasant or mechanic. With the improvement of his condition, a corresponding improvement in the character of the soldiers has taken place; men of steady habits are induced to enlist, and officers are enabled to select the best among those persons who present themselves as recruits.

The duties of the soldier are now rendered as little burdensome as is consistent with the good of the service; and the army regulations prescribe that he shall at all times be treated with mildness and humanity: even the non-commissioned officers are required to use patience and forbearance in instructing the recruits in their military exercises. When branches of discipline on the part of the soldier oblige a commander to order the infliction of punishment, attention is paid as much as possible to render it a means of promoting a reformation of character: the lash is now very sparingly used. Wherever a regiment is quartered there is established for the soldiers a school, which

the men are obliged, as part of their duty, to attend, and which is generally furnished with a library for their use. The library and school are formed and supported by the subscriptions of the officers, and both have been found to contribute greatly to the preservation of sobriety and good conduct among the men.

In time of peace the soldier, being surrounded by the members of civil society, must, like them, conform to the law; and, being under the influence of public opinion, he is, unconsciously to himself, held in obedience by it; so that no extraordinary coercion is necessary to keep him within the bounds of civil or military law. But in the colonies the soldier, even though he be serving in a time of peace, has many temptations to fall into a neglect or breach of discipline: he is far removed from the friends of his early life, who may have exercised upon his mind a moral influence for good; he sees around him only the conduct, too frequently licentious, of the lower orders of people in the country where he is stationed; and he may not possess the principles which should have been implanted in his mind by a sound education. The probability of a return to his native land before many years have passed is small, and the diseases to which he is exposed from the unhealthiness of the climate frequently terminate fatally: hence he becomes reckless from despair, and the facilities with which wine or spirituous liquors may often be obtained lead him into excesses which, while they accelerate the ruin of his health and render him unfit for duty, cause him to commit offences both against discipline and morals. Thus in the colonies there arises a necessity for greater restraints on the freedom of the soldier, and for the infliction of heavier punishments than are required at home. (Major-Gen. Sir Chas. Napier, *Remarks on Military Law*.) In time of war and on foreign service a vigorous discipline is necessary: the privations to which soldiers are then exposed strongly induce those who are not thoroughly imbued with moral and religious principles to plunder the country-people, in order to supply their immediate wants, or to drown the sense of their sufferings in

liquor. It ought also to be observed that in war-time, many turbulent spirits are induced to enter the army in the hope of enjoying the licence which the military life abroad appears to hold out. These men are the ringleaders in all excesses, and they frequently cause many of those who are weak in principle to join them; in such cases therefore the most severe measures must be immediately applied, if discipline is to be preserved in the army. The efforts made by the British commanders, during the war against the French in Spain, to maintain order, and prevent the people of the country from being injured, were great and praiseworthy. Perhaps fewer crimes were committed by the British troops than by those of their allies or their enemies; but still there were many occasions in which the national character was disgraced by the misconduct of the soldiery.

SOLICITOR. [ATTORNEY.]

SOVEREIGNTY. *Supranus* is a low Latin word, formed from *supra*, like *subtratus*, another low Latin word, formed from *subtra*. (Ducange in *u*.) These words however, though they do not belong to classical Latin, are formed according to the same analogy as the classical word *supernus* from *super*. From *supranus* have been derived the Italian *soprano* or *soprano*, and the French *souverain*, from the latter of which has been borrowed the English word *sovereign*. In the old English writers the word is correctly spelt *soverain* or *soverain* (Richardson in *v*.); the modern orthography seems to be founded on the erroneous supposition that the last syllable of the word is connected with *reign*, *regnum*. Milton spells the word *sopran*, deriving it from the Italian; but it passed into our language from the French.

Having explained the etymology of the word *sovereign*, and its derivative *soverelgnty*, we proceed to consider the meaning of the term sovereignty as it is understood by political and juridical writers.

In every society not being in a state of nature or a state of anarchy (ANARCHY), some person or persons must possess the supreme or sovereign power.

which the possession of power may be distinctly two, the one positive and the other negative; viz.:

obedience to some other person, by the same or they assume to

be of a habit of obedience of the same person or person or government.

Two marks meet in any person, such person or person or government;

if either of the two is the person or body is

For example, the local entities or Canada, being obeying the English par-

a sovereign or supreme over the government of

States of the Church, occasionally defer to the

is, is not in a habit of for any other state, and

sovereign government. of persons calling them-

self, but unable through to secure the habitual

people, are not sovereign not be recognised as a

ment by foreign states. it is impossible to fix the

at which a habit of obedi- government exists, it

reign states to determine recognise the sovereignty as dependent, which has

pendence. powers include all the

can be exercised by a gov- ernment include the legislative

give power, the power of this [Law; LEGISLA- tion] of declaring peace and

including treaties with the power of making con- sulate individuals, and the

ing inquiries. power is unlimited by

at control. The securi-

Sovereign or supreme governments are divided into Monarchies and Republics; and Republics are divided into Aristocracies and Democracies.

It is commonly, but erroneously, thought that the sovereignty resides in every person who bears the name of king; in other words, that every king is a monarch. Accordingly those kingdoms in which the king is not strictly a monarch are called "limited monarchies;" and the king is supposed to be a sovereign whose power is checked or controlled by certain popular bodies; whereas, in truth, the sovereignty is divided between the king and the popular body, and the former does not possess the entire sovereignty. This subject is further explained in MONARCHY and ROYALTY.

A sovereign government may cease to exist as such by becoming a subordinate government (as was, for example, the case with the governments of the islands of the *Aguan*, conquered by Athens, and the governments of the states which became Roman provinces), or by its dissolution, in consequence of a successful rebellion of its own subjects, or any other cause.

The subject of sovereignty will be found best explained in Mr. Austin's 'Province of Jurisprudence determined.' The received doctrines upon the subject will likewise be found in the treatises on international law. The *Lectures of Hobbes* contain a very correct view of the nature of sovereignty, which has been often misunderstood and misrepresented by later writers.

SPEAKER. [PARLIAMENT.]

SPECIALTY, SPECIALTY DEBT, or debt by special contract, is a debt which becomes due or is acknowledged to be due by an instrument under seal. (DIXON, p. 736.)

The nature of a debt by simple contract is explained under SIMPLE CONTRACT.

Blackstone (ii. 404) considers a debt of record, that is, a debt which appears to be due by the judgment of a court of record, as a "contract of the highest nature, being established by the sentence of a court of

judicature." This is, however, an erroneous view of the matter. It is simply a rule of law that a debt, for which the judgment of a court of record has been obtained, has a priority over other debts.

SPECIFICATION. [PATENT.]

SPIRITS. [WINE AND SPIRITS.]

SPY. In the discussion of this and many other questions of international law, the terms Right, Law, Lawful, and others of the same class, must be understood in a different sense from their proper technical meaning. What writers on International Law speak of as a Right is very often merely what appears fair, reasonable, or expedient to be done, or to be permitted. It is this reasonableness or expediency alone which is the foundation of those various usages which are recognised by independent civilized nations in their intercourse one among another, and constitute what is called the Law of Nations. Thus a person or a power is said to have a right according to the Law of Nations, which means that the usage of civilized nations permits the act, and this is the least objectionable sense in which the word Right is used. But when writers use the word Right merely in the sense of what is expedient, without reference to its being the foundation of a recognised usage, they are confounding the reason or foundation of a usage with the usage itself.

No doubt, we believe, has ever been intimated by any writer of authority on International Law, as to the right of nations at war with each other to avail themselves of the service of spies in carrying on their hostile operations. "Spies, whom it is, without doubt, permitted by the law of nations to employ; Moses made use of such, and Joshua himself acted in that capacity." This is the expression of Grotius in the only passage in which he touches on the subject (*Bell. et Pac.* iii. 4, 818, par. 3). Vattel says:—"If those whom he (a general) employs make a voluntary tender of their services, or if they be neither subject to nor in any wise connected with the enemy, he may unquestionably take advantage of their exertions without any violation of justice or honour" (*Le Droit des Gens*, lit. 10, § 179, in the common

English translation as edited by Svo., London, 1834).

But it is generally held that it can only be exercised under limitations of various kinds.

First, as to the right of the general of the sovereign for whom he acts, to compel any one subject to his authority to serve as a spy. Grotius, in the text to which we have referred, admits spies when caught are wont to be punished with extreme severity; and he adds that this is sometimes done justly by the sovereign, as a manifestly just cause of punishment, in the licence which the war tolerates (*licentia illa quam ius*); a useless distinction, upon which no practical rule can be founded. As Grotius himself notices, the custom when a spy is caught, to put him to death, is not so general as it once was. Vattel attempts to assign the reason for this severity: "Spies," he says, "are generally condemned to capital punishment and with great justice, since they have no other means of escape against the mischief they may do. A man of honour, Vattel proceeds, never serves, always declines serving as a spy, as well as from his reluctance to himself to this chance of an ignominious death, as because, moreover, he cannot be performed without some degree of treachery: "the sovereign, then, has no right to require such a sacrifice of his subjects, unless perhaps in a singular case, and that of the highest importance." Such loose exceptions as are stated abound in the writers on International Law, and detract very much from the practical value as well as from the scientific character of their speculations. In ordinary cases, Vattel decides, the general must be left to employ spies in the best way he can, by offering mercenary souls by rewards.

Secondly, the employment of spies is conceived to be subject to certain limitations in respect to the manner of the object attempted to be gained. "We may lawfully endeavour," says Vattel, "to weaken the enemy by all means, provided they do not attack the common safety of human society, poison and assassination." According to the proper business of a spy is to

intelligence, and such secret emissaries must not be employed to take the life of any of the enemy, although that, in another way, is commonly the immediate object of the war. Yet it might be somewhat difficult to establish a distinction between what would be an act of assassination by a spy, and many of those surprises of an enemy which, so far from being condemned or even dishonourable, have usually been used. But it has been maintained an officer or soldier cannot be treated as a spy in any circumstances, if he had uniform on when apprehended. See *leux, Précis du Droit des Gens Modernes de l'Europe* (traduit de l'Allemand) 8, 1831, liv. viii., ch. iv., § 274; no references are made to Bruckner, *Explorationibus et Explorationibus*, 1700; to *Hannov. Gel. Anzeigen*, 1799, 383 et seq.; and, in regard to the celebrated case of André in the American war, in Martens, *Erzählungen merkwürdiger Fälle*, i. 303, and to *Kampfer, Reise zum Stnaits und Völkerrichte*, 1751, No. 3.

A question closely connected with the moral lawfulness of employing spies, and indeed forming in one view a part of the question, is that of the lawfulness of using the enemy's subjects to act as spies, or to betray him. Vattel discusses this matter in reference to considerations both of law and of honour, or conscience. "It is asked in general," he begins, "whether it be lawful to seduce the enemy's men, for the purpose of engaging them to transgress their duty by an intentional treachery." It has been already said that he lays down the principle that it may lawfully endeavour to weaken the enemy by any means not affecting the common safety of human society; and determines that seducing an enemy's subjects does not come under this exception.

Such measures, accordingly, he observes, are practised in all wars. But he argues, they are not honourable, incompatible with the laws of a pure science; an evidence of which we have the fact that generals are never heard of having practised them. "If practised," concludes Vattel, "are at all times, it can be only in a very just

war, and when the immediate object is to save our country when threatened with ruin by a lawless conqueror. On such an occasion (as it should seem) the guilt of the subject or general who should betray his sovereign when engaged in an evidently unjust cause would not be of so very odious a nature." But who ever heard of a war that was not thought by those engaged in it to be a just war on their own side and an unjust war on the part of their adversaries? So that this distinction settles nothing. It is held however to be perfectly allowable in every point of view merely to accept the offers of a traitor. In this case Vattel argues, "We do not seduce him; and we may take the advantage of his crime, while at the same time we detect it. Fugitives and deserters commit a crime against their sovereign; yet we receive and harbour them by the law of war, as the civil law expresses it." If such offers have ever been rejected, as that of the physician of Pyrrhus, who offered to poison his master, was by the Romans, he holds the act to be one of magnanimity indeed, but yet as one which no general or sovereign is bound to imitate. Or, as Grotius has expressed it, such a course may evince infirmity of mind in those who pursue it, or their confidence of being able to compass their objects by open force, but has nothing to do with the question of what is lawful or unlawful. Martens holds with still less qualification, that we cannot condemn as an illegitimate means of carrying on a war the corruption employed to seduce the officers or other subjects of the enemy, and to tempt them either to reveal a secret or to surrender a post, or even to get up a revolt; it is the business of each state, he argues, to protect itself from such attempts by a careful choice of the persons it employs or trusts, and by the severity of the penalties with which it punishes their treachery. "But," he adds, "it is without doubt to overleap by a great way the bounds of the law of war, and to declare itself an enemy of the whole human race, for a nation to try to stir up every other people to revolt by a general promise of assistance, as was done by the French National Convention in their decree of the 19th of November, 1793."

bel of their service is expired. To the quartermaster-general is confided the duty of regulating the marches of the regiments, providing the supplies of provisions, and assigning the quarters, or places of encampment.

All military commanders of territories or bodies of troops in Great Britain, and, or in foreign stations, transmit annually to the adjutant-general of the army circumstantial accounts of the state of the territory and of the troops which they command; and the reports are regularly submitted to the general commanding in chief.

The staff of a regiment consists of the adjutant, quartermaster, paymaster, chaplain, and surgeon.

About the year 1800 the British government first formed a particular school for the purpose of instructing officers in the art of surveying ground in connection with the art of tactics which relates to the use of routes and of advantageous positions for troops. These officers were independent of the master-general of the ordnance, and served under the orders of the quartermaster-general or adjutant-general; they were called staff-officers, and selected from the cavalry or infantry after having done duty with a regiment not less than four years. They were first employed in Egypt, where they rendered valuable service; and the school was afterwards united to the Royal Military Academy, which had been then recently created for the instruction of cadets, and were to serve in the cavalry or the artillery of the line. At that institution a limited number of officers, under the sanction of the war department, continued to be instructed in the duties of the staff, in the sciences connected with the military art.

During the war in Spain, from 1808 to 1814, the staff-officers were constantly employed, previously to a march or a retreat, in surveying the country at least day's journey in front of the army, and, after the death of the Duke of York, the corps ceased to be kept up, and for several years it was reduced to a single company, which was charged with the duty of repairing the military canal at London. This company was afterwards

incorporated with the corps of sappers and miners.

The duties of officers belonging to the quartermaster-general's staff are very different from those of the military engineers; the latter are employed in the construction of permanent fortifications, batteries, and field-works; while the former survey ground in order to discover roads, or sites for military positions, for fields of battle, or quarters for the troops. The education of a staff-officer is such as may qualify him for appreciating the military character of ground: for this purpose he learns to trace the directions of roads and the courses of rivers or streams; and in mountainous countries to distinguish the principal chains from their ramifications, to examine the entrances of gorges, and to determine the heights of eminences or the depths of ravines. He has, besides, to acquire a facility in determining or estimating the resources of a district with respect to the means it affords of supplying provisions or quarters for the troops.

The staff-officer ought also to know how to correct the illusions to which the eye is subject in examining ground, from the different states of the air, and the number and nature of the objects which may intervene between himself and those whose positions are required. He ought to be able to estimate the number of men which a visible tract of ground can contain, and to form a judgment concerning the dispositions and stratagems which it may permit an army to put in practice.

STAGE-CARRIAGE. **HACKNEY-COACH.** **CABRIOLET.** A Stage Carriage is defined by the 2 and 3 Wm. IV. c. 102, as a carriage of any construction for conveying passengers for hire to or from any place in Great Britain, which shall travel at the rate of not less than three miles in the hour and be impelled by animal power, provided each passenger pay a distinct fare for his place therein. Railway carriages and vehicles moved by steam are excluded from the definition.

By the 1 and 2 Wm. IV. c. 22, it is declared that every carriage with two or more wheels, used for plying for hire in any public street at any place within five miles from the General Post-office in London, of whatever form or construction,

tion, or whatever may be the number of persons which it shall be calculated to convey, or the number of horses by which it shall be drawn, shall be deemed a *hackney-carriage*. This class of public vehicles appears to have originated in London. The rise and progress of their use in London may be pretty distinctly traced from notices in Macpherson's 'Annals of Commerce,' and in Anderson's 'History of Commerce,' of which work the early volumes of Macpherson are a reprint with but few alterations. Under the year 1625 Macpherson, or rather Anderson, observes that "Our historiographers of the city of London relate that it was in this year that hackney-coaches first began to ply in London streets, or rather at the inns, to be called for as they were wanted; and they were at this time only twenty in number." In 1652 the number of hackney-coaches daily plying in the streets was limited to 200; in 1654 it was increased to 300, allowing however only 600 horses; in 1661 to 400; and in 1694 to 700. By an act of the 9th year of Anne (c. 23) the number was to be increased to 800 on the expiration, in 1715, of the licences then in force, and 200 hackney-chairs were also licensed. The number of chairs was shortly increased to 300, and by the act 12 Geo. I. c. 12, to 400. In 1771 the number of coaches was further increased to 1000.

A lighter kind of vehicle, drawn by one horse, was brought into extensive use in Paris. Efforts were made to introduce similar vehicles into this country, but owing to a regard for the "vested rights" of the hackney-coach owners, it was long found impossible to get licences for them. With great difficulty Messrs. Bradshaw and Hothel (the latter a member of parliament) obtained licences for eight cabriolets in 1825, and started them at fares one-third lower than those of hackney-coaches. The name "cab" is now commonly applied to all hackney-carriages drawn by one horse, whether on two or four wheels. During the first few years of the employment of such carriages their number was restricted to sixty-five, while the number of coach-licences was increased to twelve hundred; but in 1833 all restriction as to the number of hackney-carriages was removed.

The number of hackney-carriages licensed for use during the year ending January 1845, was 2450, all of which, with the exception of less than 200, were cab, one-horse vehicles. The number of cabs licensed during the year ending March 1844, was 4627, besides 371 watermen.

The generally low standard of character among cab-drivers leads to the adoption of a system of remuneration which is not calculated to promote honesty and good feeling. The vehicles and drivers are lent out at a fixed sum per day; rather, the men are expected to do home the stipulated amount. The experiment of paying liberal wages, and owing to the honour of men, is said to have been tried and found utterly impracticable.

An attempt was made, about the year 1800, to introduce a more common kind of vehicle, resembling an omnibus instead of the old stage-coaches, which could only carry four or at most six or seven passengers, but the project failed. When re-introduced from Paris the omnibus was drawn by three horses, but this arrangement was soon abandoned.

The first successful omnibus in London was started by a coach-builder named Shillibeer, in July, 1829, in run between Greenwich and Charing-Cross, at a considerably less than those of the short stages; in addition to which, the greater part of the passengers were sheltered from the weather, by a judicious arrangement of making the same charge for inside and outside passengers. Shillibeer soon obtained extensive patronage, and began to break down the prepossession of exclusiveness which formerly distinguished inside from outside passengers. Success in the first experiment led Shillibeer to establish omnibuses between Paddington and the Bank. After some opposition the new system of omnibuses was fully established.

(Some of the facts in the preceding part of this article are derived from the papers in Chambers's 'Edinburgh Magazine' for 1845 (Nos. 76 and 78), but some of the historical matter is to be found in Knight's 'London' and the 'Penny Magazine,' vol. vi.)

In 1769 the act of parliament was passed (10 Geo. III. c. 51) which

ness a duty on hired carriages of any description. This duty has at times been easily regulated, and is now settled by statute not amended by 2 & 3 Wm. c. 120, and 3 & 4 Wm. IV. c. 48.

The laws which relate to hackney-carriages and metropolitan stage-carriages chiefly comprised in two acts of parliament: 1 & 2 Wm. IV. c. 22, which came into operation January 5th, 1832, titled "An Act to amend the Laws relating to Hackney-Carriages, and to Waggon, Carts, and Drays, and to place the Duties on Hackney-Carriages and on Hackers and Pedlars in England under the Commissioners of Excise;" and 6 & 7 Vict. c. 86, entitled "An Act for regulating Hackney State Carriages in and near London," in the former act are contained the most part of the enactments which relate to hackney-carriages; in the latter, which more especially apply to metropolitan stage-carriages (omnibuses).

The limits of hackney-carriages (hack-coaches and cabriolets) are five miles from the General Post-office, London; drivers of hackney-carriages are compeled to drive five miles from the place where hired or from the General Post-office; but if any hackney-carriage shall be discharged at any place beyond the limits of the metropolis (that is, beyond the limits of which the radius is three miles from the General Post-office), after eight in the evening and before five in the morning, hack-fare may be demanded to the nearest part of the said limits or to the standing-place beyond the limits where the carriage may have been hired, at the option of the hirer.

The fares of hackney-carriages are regulated by the act 1 & 2 Wm. IV. c. 22. Every hackney-carriage drawn by two horses, for any distance not exceeding one mile, 1s.; for any distance exceeding one mile, at the rate of 6d. for every half-mile and for every fractional part of half-mile over and above any number of miles completed. By time, the fare for not exceeding thirty minutes, 1s.; exceeding forty-five minutes, 1s. 6d.; exceeding one hour, 2s.; and for any time after the rate of 6d. for every two minutes completed, and 6d. for any

fractional part of fifteen minutes. The fares for hackney-carriages drawn by one horse (cabriolets) are one-third less, so that for the first mile they are 5s., for a mile and a half, 1s., and so on.

Every hackney-carriage and metropolitan stage-carriage is licensed by a registrar, deputy-registrar, or other officer appointed by one of Her Majesty's principal Secretaries of State; and every driver of a hackney-coach, and every driver and conductor of a metropolitan stage-carriage, and every waterman, at the time of granting the licence receives a metal ticket, which every such driver, conductor, or waterman is to wear on his breast in such manner that all the writing thereon may be distinctly visible. A stamp-duty of 5s. is charged on every licence. Plates are to be affixed to hackney-carriages with the name and address of the proprietor and number of the licence; and "Metropolitan Stage-Carriage," or such other words as the registrar shall direct, are to be painted on omnibuses. Proprietors of metropolitan stage-carriages fix their own fares, but those fares are to be distinctly painted on or in the carriage, as well as the number of persons for whom the carriage is licensed.

Hackney-carriages standing in the street, though not on any stand, to be deemed plying for hire. Drivers may ply on Sundays, and, if plying, are compellable to drive when hired. Agreement to pay more than legal fare not binding, but driver may agree to drive any distance at discretion for a stated sum, and must not charge more than that sum, though less than legal fare. Deposit to be paid for carriage kept waiting, and driver must take the deposit and wait.

The act 6 & 7 Vict. c. 86, repeals a previous act (1 & 2 Vict. c. 79), and extends the enactments not specifically repealed of the 1 & 2 Wm. IV. c. 22, to the 6 & 7 Vict. c. 86. Other provisions of the acts relate chiefly to the restoration of property left in carriages, to furious driving, intoxication, insulting language, loitering, and other acts of misbehaviour; to proceedings of proprietors, drivers, and conductors, as to licences, payment of duties, contracts with each other; and to

modes of granting summonses, powers of magistrates, punishments, penalties, &c.

STAMPS, STAMP ACTS. Stamps are impressions made upon paper or parchment by the government or its officers for the purposes of revenue. They always denote the price of the particular stamp, or in other words, the tax levied upon a particular instrument stamped, and sometimes they denote the nature of the instrument itself. If the instrument is written upon paper, the stamp is impressed in relief upon the paper itself; but to a parchment instrument the stamp is attached by paste and a small piece of lead which itself forms part of the impression. These stamps are easily forged, and at various times forgeries of them upon a large scale have been discovered. The punishment for the forgery of stamps was made a capital offence by the Act of William and Mary, and continued so until the year 1830 (11 Geo. IV. & 1 Wm. IV. c. 66), when it was made punishable by transportation.

In France stamps are used both for the authentication of instruments and as a source of revenue.

The stamp tax was introduced into this country in the reign of William and Mary (5 W. & M. c. 21): such an impost had previously existed in Holland. The Act 5 W. & M. c. 21, imposes stamps upon grants from the crown, diplomas, contracts, probates of wills and letters of administration, and upon all writs, proceedings, and records in courts of law and equity; it does not, however, seem to impose stamps upon deeds, unless they are enrolled in the courts at Westminster or other courts of record. Two years afterwards, however, conveyances, deeds, and leases were subjected to the stamp duty, and by a series of acts in the succeeding reigns every instrument recording a transaction between two individuals was subjected to a stamp duty before it could be used in a court of justice. By the 38 Geo. III. c. 78, a stamp duty is imposed on newspapers, and by a subsequent act inventories and appraisements are required to be stamped. Legacies are largely taxed by means of stamped receipts. Stamps are also used as a convenient method of imposing a tax upon a

particular class of persons: thus, a of apprenticeship are subject to duties articles of clerkship to a solicitor to of 120*l.* Solicitors are required to take annually a certificate, stamped either a 12*l.*, 2*l.*, or 6*l.* stamp according to circumstances. Before a person commences practice as a physician, an advocate, barrister-at-law, or an attorney, he pay a tax varying from 50*l.* to 100*l.*, the form of a stamp upon admission. Notaries public, bankers, pawnbrokers and others, must obtain a yearly licence in order to exercise their callings.

The schedule to the Act 55 Geo. III. c. 124, which consolidates all the stamp acts, occupies nearly 100 octavo pages. Since the year 1815 the stamp duties have been mitigated. The 5 Geo. IV. c. 11, exempts law proceedings from stamp duty, and the stamps upon newspapers reduced from fourpence to a penny (6 & 7 Wm. IV. c. 76 (1836), which exempts the paper from postage, the stamp duties on advertisement newspapers, see **ADVERTISEMENT NEWSPAPERS**.

In order to protect the revenue stamp acts usually impose a penalty upon any fraudulent evasion of their provisions; and the 44 Geo. III. c. 98, provides that the proceedings shall be in the nature of the attorney-general in England, the king's advocate in Scotland, and the penalty shall go entirely to the benefit of the crown.

The acts render an unstamped instrument invalid, and in order to increase the revenue they multiply the number of instruments to which the stamp duty is applicable. Hence the stamp acts have given rise to many questions in courts of law, and the amount of stamps required for particular instruments, the nature of the stamps, the effect which the insufficiency or erroneous nature of the stamp produces upon the instrument, and the circumstances in which the stamp duty may be made in a court of law a paper not stamped, but nevertheless questionably recording a particular transaction.

The courts of law have usually interpreted the stamp acts with the strictness with which penal statutes are interpreted, giving to exemptions as narrow an extension as the words will admit. On the other hand, feeling it a duty

payment of this branch of the tax, judges oppose the admission of an instrument so constructed as to evade most of the stamp duty.

A main rule in the levying of these taxes is that each distinct transaction between separate parties, recorded by a document, shall have a separate stamp attached to it.

An agreement not under seal may be made within twenty-one days after it is signed; but in all other cases the instrument must be written upon previously stamped paper, or upon a blank piece of paper properly affixed to the instrument already executed, under the instrument admissible as evidence in a court of law. We shall present the penalties by payment of which the severity of these provisions is mitigated. The value of spoils, if claimed within twelve months, is recovered; if the absence of all is established on oath.

If a court has sufficient evidence that a receipt has been properly stamped, a loan lost, or is withheld by this act, it will receive an undoubted copy as evidence. If a debt has been contracted under a written instrument can be established by parole evidence, so that the existence of the debt shall not come under the test of the court, the plaintiff may recover without production of the agreement; but if the existence of the written instrument appears from the testimony of the plaintiff's witnesses, or from some other coming into question which really implies the existence of a written instrument, then the agreement is not admissible as the best evidence; a plaintiff cannot recover unless it is stamped. Nevertheless an undated instrument, such as a receipt or a contract, may be used by a witness to refresh his memory as to the facts paid in his presence or acknowledged in his presence to have been received; in such instances the case rests on the document, but on the testimony of the witness.

An unstamped instrument, though an admissible foundation for proceedings at law, may be used as evidence to defeat

fraud, and with certain limitations to establish a criminal charge. An unstamped agreement containing matter not requiring a stamp, may be used as evidence of that matter, although it is invalid as evidence of the terms of the agreement. An indictment for forgery likewise may be maintained, although the instrument forged may be invalid for want of a proper stamp; but such an invalid instrument is not sufficient to support an indictment for larceny.

Originally a stamp was invalid if the denomination was erroneous, although the amount paid was correct; but by the 55 Geo. III., wrong stamps, if of sufficient value, are rendered valid, unless upon the face of them they are appropriated to a different instrument from that to which they are attached. In this case the stamp is forfeited, but the instrument may be re-stamped upon payment of the penalty; by a previous act (57 Geo. III., c. 127, s. 2) any instrument, excepting bills and promissory notes, is allowed to be stamped upon payment of the duty, and a penalty of 10*l.* (or if it is a deed, 10*l.* for each skin); if it is to be stamped within a twelvemonth after its execution, the commissioners are allowed to remit the penalty (44 Geo. III., c. 16). Thus even during a trial an instrument may be stamped so as to render it admissible; but as this is rarely possible, it has been suggested that an officer of the court ought to be enabled to affix the proper stamp and levy the penalty; so that justice may not be defeated, or at least deferred, from the want of this formal circumstance.

The general principles which regulate the courts in the interpretation of the Stamp Acts are, that fraudulent evasion of the stamp duties shall be punished by forfeiture of all benefit from the document which ought to have been stamped; and that a just claim shall not be avoided or a fraud be effected because the just claimant has unintentionally violated the stamp laws.

The stamp duties and the custody of the dies are placed under the superintendence of commissioners appointed under the great seal. The 4 & 5 Wm. IV., c. 60, amended by 5 & 6 Wm. IV., c. 20.

consolidated the Board of Stamps. The commissioners transact their business in Somerset House, London. The endeavour to impose stamp duties upon our American colonies in 1765, was one of the approximate causes of the American revolution.

The law respecting stamps, and a reference to the principal cases cited, are contained in Chitty's *Practical Treatise on the Stamp Laws*. That work has been mainly used for this article.

The stamp duties act very unequally on small and on large transactions, and fully justify the statement that the legislature that imposed them were desirous to shift the burden of taxation from the rich to the middling classes. The stamp duty on the sale of land of the value of 50*l.* (taking a certain average length of conveyance) is 12½*l.* per cent.; of the value of 100*l.* it is 5 per cent.; of the value of 500*l.* it is 1*l.* 14*s.* 3*d.* per cent.; but of the value of 5000*l.* it is only one per cent. The same unequal scale applies to mortgages. "A mortgage of 50*l.* would cost in stamps and law expenses, 30 per cent.; a mortgage for 12,500*l.* would cost one per cent.; and for 100,000*l.* it would cost 12*s.* per cent." This scale of taxation is manifestly framed to shift the burden from great landowners and capitalists to those of very moderate means. These facts appear from a Report of a Committee of the Lords (1846) on the peculiar burdens which the land has to bear. The result of this inquiry shows clearly the peculiar burdens which the comparatively poor sustain in consequence of the legislation of the rich.

The net produce of the stamp duties in the year which ended October 10, 1844, was 6,533,385*l.*; in the year which ended October 10, 1845, it was 6,961,370*l.*

STANDING ORDERS. [BILL IN PARLIAMENT.]

STANNARY, from the Latin *Stannum*, "tin." This term sometimes denotes a tin-mine, sometimes the tin-mines of a district, sometimes the royal rights in respect of tin-mines within such district. But it is more commonly used as including the tin-mines within a particular district, the tinners employed in working them, and the customs and privileges

attached to the mines, and to those employed in digging and purifying the ore.

The great stannaries of England are those of Devon and Cornwall, of which the stannary of Cornwall is the more important. The stannaries of Cornwall and Devon, were granted by Edward III. to the Black Prince, upon the creation of the duchy of Cornwall, and are perpetually incorporated with that duchy. In general both stannaries are under one deputy-officer, called the lord-warden of the stannaries, with a separate vice-warden in each county. The stannary of Cornwall is subdivided into the stannary of Redmore, in the eastern parts of the county, and the stannaries of Tywardreath, Penwith, and Helston, in the west.

All tin in Cornwall and Devon, wherever might be the owner of the land, appears to have formerly belonged to the king, by a usage peculiar to these counties; for the general prerogative of the crown extends only to mines of gold or silver, or other mines in which the value of the gold or silver exceeds that of the inferior metal with which it is combined. (12 Coke's *Rep.*, 9.)

King John, in 1201, granted a charter to his tinners in Cornwall and Devonshire, authorising them to dig tin and to smelt it, and to melt the tin anywhere in the moors and in the fees of bishops, abbots, and earls, as they had been used and accustomed. (Maddox, *Ess.*, 279 & 280.) This charter was confirmed by Edward I., Richard II., and Henry IV.

In Cornwall the right of digging in other men's land is now regulated by a peculiar usage, called the custom of *hounding*. This custom attaches only to land as now is or antiently was waste, that is, land open or unenclosed. The mode of acquiring a right to the land is this: an agent goes on the spot to be bounded and digs up the turf or stones, making little pits at the four corners towards the east, west, north, and south, of a reasonable extent; and the area or space within the four corners will be the contents of the bounds. Having made these corners, the agent describes on paper the situation of the bounds, states the day when, and the person by whom they were marked out or cut, and makes a declaration

we see this was done, express-
 that the spot was free of all
 aids. At the next stannary
 secures this description to be
 meant, when a first proclama-
 tion of it in open court, the parch-
 ment being stuck up in a con-
 ceen in the court, and a minute
 action is made by the steward
 or court paper. On the next
 five weeks afterwards, a second
 is in like manner made, and
 a third court; when, if there
 is any opposition, judgment is
 writ of possession issues to
 the stannary, who delivers
 accordingly. In this mode the
 lord acquires a right to search
 all the tin he can find, pay-
 ment of the soil one-fifteenth, or to
 him to do so; and to resist all
 that to interrupt him. The
 right is renewed annually, by a
 day on behalf of the bound-
 ed lord may re-enter.

The stannary rights, the duke
 as grantee of the crown, has
 re-emption of tin throughout
 a privilege supposed to have
 been to the crown out of an ori-
 ginal property in tin-mines, but
 now it is never exercised.

For the redressing of griev-
 ances the general regulation of the
 representative assemblies of
 the stannaries were summoned both in De-
 von and Cornwall. These assem-
 bled parliaments, or convoca-
 tions, and were summoned by
 the duke of Cornwall, under
 the name of the stannaries, under
 the duke of Cornwall, or
 when there was no duke an-
 noal requiring him so to do.
 A convocation was held in 1752.
 In the case of *Rowe v. Bren-
 ding and Ryland's Reports*.)
 a payable to the duke of Corn-
 wall stamping or coinage of tin
 was by 1 & 2 Vict. c. 120, and
 the courts were re-modelled by
 IV. c. 106. Further regula-
 tions have been introduced
 in 1868.

The "anciently written *estaple*,
 as Lord Coke, "of the French

word *estaple*, which signifies a mart or
 market." It appears to have been used to
 indicate those marts both in this country
 and at Bruges, Antwerp, Calais, &c., on
 the Continent, where the principal pro-
 ducts of a country were sold. Probably
 in the first instance these were held at
 such places as possessed some conve-
 nience of situation for the purpose. After-
 wards they appear to have been confirmed,
 or others appointed for the purpose by
 the authorities of the country. In Eng-
 land this was done by the king (2 Edw.
 III. c. 9). All merchandize sold for the
 purpose of exportation was compelled
 either to be sold at the staple, or after-
 wards brought there before exportation.
 This was done with the double view
 of accommodating the foreign mer-
 chants and also enabling the duties on
 exportation to be more conveniently and
 certainly collected. Afterwards the word
 staple was applied to the merchandize
 itself which was sold at the staple. The
 staple merchandize of England at these
 early times, when little manufacture was
 carried on here, is said by Lord Coke to
 have been wool, woolfells or sheepskins,
 leather, lead, and tin. Incident to the
 staple was a court called "the court of
 the mayor of the staple." This court
 was held for the convenience of the mer-
 chants, both native and foreign, attending
 the staple. It was of great antiquity;
 the date of its commencement does not
 appear to have been certainly known.
 Many early enactments exist regulating
 the proceedings at the staple and the
 court held there. Most of these were
 passed during the reigns of the two Ed-
 wards, the first and third of that name.
 These kings appear to have been ex-
 tremely anxious to facilitate and encour-
 age foreign commerce in this kingdom;
 and by these statutes great immunities
 and privileges are given, especially to
 foreign, but also to native merchants
 attending the staple. The first enactment
 of importance is called the Statute of
 Merchants, or the Statute of Acton-Burnel,
 and was passed in the 11th year of Edw.
 I., A.D. 1283. (BURNEL, ACTON, STA-
 TUTE OF.) The statute passed in the
 27th year of Edw. III., cap. 2, is called
 the Statute of Staple. One object of it

was to remove the staple, previously held at Calais, to various towns in England, Wales, and Ireland, which are appointed by the statute. The statute directed proceedings similar to those prescribed for obtaining a Statute Merchant by means of a sealed recognizance, in consequence of which execution might be obtained against the lands and tenements of the debtor in the same manner as under a Statute Merchant.

A variety of other statutes were passed in the same and succeeding reigns, in some respects confirming, in others altering the provisions of the leading statute. As commerce became more extended, the staples appear to have fallen into disuse. Lord Coke, a great worshipper of antiquity, complains that in his time the staple had become a shadow; we have only now, he says, *stapulam umbratilem*, whereas formerly it was said that wealth followed the staple. The practice however of taking recognizances by statute staple, from the many advantages attending them, long continued. (11 Edw. I.; 27 Edw. III. caps. 1, 3, to 6, 8, 9; 2 Inst., 322; Com. Dig., tit. 'Stat. Staple'; 2 Saund. by Wms., 69; Reeves, *Hist. Eng. Law*, v. 2, pp. 161, 393.)

STAR-CHAMBER. The Star-Chamber is said to have been in early times one of the apartments of the king's palace at Westminster which was used for the despatch of public business. The Painted Chamber, the White Chamber, and the Chambre Markolph were occupied by the triers and receivers of petitions, and the king's council held its sittings in the Camera Stellata, or Chambre des Estoyles, which was so called probably from some remarkable feature in its architecture or embellishment. Whatever may be the etymology of the term, there can be little doubt that the court of Star-Chamber derived its name from the place in which it was holden. "The lords sitting in the Star-Chamber" is used as a well-known phrase in records of the time of Edward III., and the name became permanently attached to the jurisdiction, and continued long after the local situation of the court was changed.

The judicature of the court of Star-Chamber appears to have originated in

the exercise of a criminal and civil jurisdiction by the king's council, or by that section of it which Lord Hale calls the *Concilium Ordinarium* in order to distinguish it from the *Privy Council*, who were the deliberate advisers of the crown, (Hale's *Jurisdiction of the Lord's House*, chap. v.; Palgrave's *Essay on the Original Authority of the King's Council*.) This exercise of jurisdiction by the king's council was considered as an encroachment upon the common law, and being the subject of frequent complaint by the Commons, was greatly abridged by several acts of parliament in the reign of Edward III. It was discouraged also by the common-law judges, although they were usually members of the council; and from the joint operation of these and some other causes the power of the *Concilium Regis* as a court of justice had materially declined previously to the reign of Henry VII., although, as Lord Hale observes, there remain "some straggling foot-steps of their proceedings" till near that time. The statute of the 3 Henry VII. c. 1, empowered the chancellor, treasurer, and keeper of the privy-seal, or any two of them, calling to them a bishop and temporal lord of the council and the two chief justices, or two other justices in their absence (to whom the president of the council was added by stat. 21 Henry VIII. c. 20), upon bill or information exhibited to the lord chancellor or any other, against any person for maintenance, giving of liveries, and retainers by indentures or promises, or other embraces, untrue demeanings of sheriffs in making panels and other untrue returns, for taking of money by juries, or for great riots or unlawful assemblies, to call the offenders before them and examine them, and punish them according to their deserts. The object and effect of this enactment are extremely doubtful; but it is perhaps the best opinion that the court created by the 3 Henry VII. c. 1, was not the court of Star-Chamber; that this court by some fell into disuse after the middle of the reign of Henry VIII.; that the court of Star-Chamber was the old *concilium ordinarium*, against whose jurisdiction many statutes had been enacted from the time of Edward III., and that no part of the

tion exercised by the Star-Chamber, could be maintained on the authority of the statute of Henry VII. At the beginning of the reign of Elizabeth, the Star-Chamber was unquestionably in full operation, in the form in which it was known to the succeeding reigns; and at this period, before it had reached its mere engine of state, it was no means destitute of utility. It was the only court in which great and bold offenders had no means of resisting the administration of justice, or corrupting its course. And at the reign of Elizabeth, when the Star-Chamber had reached its maturity, it seems, except in the most flagrant cases, to have been administered with moderation and discretion. (Palgrave's *History of the King's Council*, p. 105.)

The proceedings in the Court of Star-Chamber were by information, or bill of attainder; interrogatories in writing drawn up and exhibited to the defendant and witnesses, which were answered on oath. The attorney-general had the power of flag *ex officio* informations; as had the king's almoner to recover debts and goods of a felon-deceased, which were supposed to go in support of the crown. In cases of confession by the accused persons, the information and process were oral; and hence arose one of the most oppressive abuses of the court, the proceedings. The proceedings by written information and interrogatories was tedious and troublesome, involving much nicety in pleading, and requiring a degree of precision in setting forth the accusation, which was almost impossible in a state prosecution, especially with a view to these difficulties. Lord Bacon discouraged the king from adopting this mode of proceeding in cases of the pursuivants, saying that Star-Chamber without confession was "a waste of time." (Bacon's *Works*, vol. iii. p. 105.) In political charges therefore the attorney-general derived a great advantage over the accused by proceeding by written information or orally. The consequence was that persons were spared the pains and pressure of every kind, and the torture, was miserably abused. According to the laws of the

court, no person could be orally charged unless he acknowledged his confession at the bar, "freely and voluntarily, without constraint." (Hudson's *Treatise of the Court of Star-Chamber*.) But this check upon confessions improperly obtained seems to have been much neglected in practice during the later periods of the history of this court. Upon admissions of immaterial circumstances aggravated and distorted into confessions of guilt, the Earl of Northumberland was prosecuted *ore tenus*, in the Star-Chamber, for being privy to the Gunpowder Plot, and was sentenced to pay a fine of 30,000*l.*, and to be imprisoned for life; "but by what rule," says Hudson (*Coll. Jurid.*, vol. ii. p. 68), "that sentence was, I know not, for it was *ore tenus*, and yet not upon confession." And it frequently happened during the last century of the existence of the Star-Chamber, that enormous fines, imprisonments for life or during the king's pleasure, banishment, mutilation, and every variety of punishment short of death were inflicted by a court composed of members of the king's council, upon a mere oral proceeding, without hearing the accused, without a written charge or record of any kind, and without appeal.

The judges of the Court of Star-Chamber were the lord chancellor or lord keeper, who presided, and when the voices were equal gave the casting vote, the lord treasurer, the lord privy seal, and the president of the council, who were members of the court, *ex officio*. In addition to these were associated, in early periods of the history of the court, any peers of the realm who chose to attend. According to Sir Thomas Smith, the judges in his time were the "lord chancellor, the lord treasurer, all the king's majesty's council, and the barons of this land." (*Commonwealth of England*, b. iii. c. 8.) Hudson states that the number of attendant judges "in the reigns of Henry VII. and Henry VIII. have been well near to forty; at some one time thirty; in the reign of Queen Elizabeth often times, but now (i. e. in the time of James I.) much lessened, since the barons and earls, not being privy councillors, have but seldom

their attendance." He further states, that "in the times of Henry VII. and Henry VIII. the court was most commonly frequented by seven or eight bishops and prelates every sitting-day;" and adds, "that in those times, the fines trencched not to the destruction of the offender's estate, and utter ruin of him and his prosperity, as now they do, but to his correction and amendment, the clergy's song being of mercy." (*Coll. Jurid.* vol. ii. p. 36.) The settled course during the latter part of the reign of Elizabeth and the reigns of James I. and Charles I., seems to have been to admit only such peers as judges of the court as were members of the privy council.

The civil jurisdiction of the Star-Chamber comprehended mercantile controversies between English and foreign merchants, testamentary causes, and differences between the heads and commonalty of corporations, both lay and spiritual. The court also disposed of the claims of the king's almoner to deodands, and also such claims as were made by subjects to deodands and *catalla felonum* (chattels of felons) by virtue of charters from the crown. The criminal jurisdiction of the court was very extensive. If the king chose to remit the capital punishment, the court had jurisdiction to punish as crimes even treason, murder, and felony. Under the comprehensive name of contempts of the king's authority, all offences against the state were included. Forgery, perjury, riots, maintenance, embracery, fraud, libels, conspiracy, and false accusation, misconduct by judges, justices of the peace, sheriffs, jurors, and other persons connected with the administration of justice, were all punishable in the Star-Chamber.

It was also usual for the judges of assize, previously to their circuits, to repair to the Star-Chamber, and there to receive from the court directions respecting the enforcement or restraint of penal laws. Numerous instances of this unwarrantable interference with the administration of the criminal law occur with reference to the statutes against recusants in the reigns of Elizabeth and James I.

A court of criminal judicature, com-

posed of the immediate agents of the prerogative, possessing a jurisdiction very extensive, and at the same time imperfectly defined, and authorized to inflict any amount of punishment short of death, must, even when best administered, have always been viewed with apprehension and distrust; and accordingly in the earlier periods of its history we find constant remonstrances by the Commons against its encroachments. As civilization, knowledge, and power increased among the people, the jurisdiction of the lords of the council became intolerable. A measure which was introduced into the House of Commons in the last parliament of Charles I., to limit and regulate the authority of this court, terminated in a proposal for its entire abolition, which was eventually adopted without opposition in both Houses. The statute 16 Car. I. c. 10, after reciting Magna Charta and several early statutes in support of the ordinary system of judicature by the common law, goes on to state that "the judges of the Star-Chamber had not kept themselves within the points limited by the statute 3 Henry VII., but had undertaken to punish where no law warranted, and to make decrees having no such authority, and to inflict heavier punishments than by any law was warranted; and that the proceedings, censures, and decrees of that court had by experience been found to be an intolerable burthen to the subjects, and the means to introduce an arbitrary power and government." The statute then enacts, "that the said court called the Star-Chamber, and all jurisdiction, power, and authority belonging unto or exercised in the same court, or by any of the judges, officers, or ministers thereof, should be clearly and absolutely dissolved, taken away, and determined; and that all statutes giving such jurisdiction should be repealed."

STATE. [SOVEREIGNTY.]

STATES GENERAL. This term is from the French *Etats Généraux*, the assembly of the three orders of the kingdom: the clergy, the nobility, and the third estate. The States General of France were convoked in 1614 under Louis XIII., and they did not meet again till 1785. The memorable convocation

the States General of France in 1789 led to the Revolution. A dispute arose between the two privileged orders and a third estate (*tiers état*) about their mode of sitting and voting. It was at last proposed by the Breton members that the third estate should assume the name of National Assembly without regard to the other two orders. Mirabeau opposed this proposition, but finally in the same year (17th June, 1789) the deputies of the *tiers état* with such deputies of the clergy as chose to join them, for one of the nobles accepted the invitation to join, assumed the name of the National Assembly, a term which had sometimes been used to designate the States General. The king, Louis XVI., afterwards sanctioned the union of the three estates in the National Assembly. One of the early acts of the National Assembly was the publication of the 'Declaration of the Rights of the Man and the Citizen'; a piece of absurd and incongruous declamation which Mirabeau's good sense made him displease, and all sober thinking people still be of his mind. [LIBERTY.] The National Assembly continued its labours several months after the death of Mirabeau, 2nd April, 1791. In September, 1791, the assembly presented to the king for his sanction the new constitution, which the king accepted, and the assembly dissolved itself on the 30th of the same month. The first National Assembly is generally called 'l'assemblée constituante,' from its having framed the constitution. The constitution lasted about twelve months, and was followed by the Republic.

STATISTICS is that department of political science which is concerned in collecting and arranging facts illustrative of the condition and resources of a state. To reason upon such facts and to draw conclusions from them is not within the province of statistics; but is the business of the statesman and of the political economist.

That it is necessary for a government, in order to govern well, to acquire information upon matters affecting the condition and interests of the people is obvious. Indeed, the civilization of a country may almost be measured by the completeness

of its statistics; for where valuable statistical records of ancient date are found concerning a country not yet advanced in civilization, which would appear to contradict this position, we owe them to sovereigns or governments of uncommon vigour and sagacity. However rude the government of a country may be, it cannot attempt to make laws without having acquired the means of forming a judgment, however imperfect, as to the matters brought under its consideration. In this sense statistics may be said to be coeval with legislation; but as legislation has rarely been conducted upon any fixed principles, or partaken of the character of science, in the earlier ages of the world, we must attribute to statistics, as a department of political science, a much later origin. It is chiefly to the rise of political economy that we are indebted for the cultivation of statistics. The principles of that science, which are directly concerned about the prosperity and happiness of mankind, were not reduced to any system until the middle of the last century; since that time, political economy has been cultivated as an inductive science. The correctness of preconceived theories has been tested by the observation and analysis of facts; and new principles have been discovered and established by the same means. A limited knowledge of facts had previously been an obstacle to the progress of political economy; and, on the other hand, the neglect of that science caused indifference to statistical inquiries. Statistics, which had been neglected until political economy rose into favour, have since been cultivated with continually increasing care and method, as that science has been further developed, and the knowledge of its fundamental principles more widely diffused.

This connection between political theories and statistics, while it has led to the collection of many data which would not otherwise have been obtained, has often introduced a partial and deceptive statement of facts, in order to support preconceived opinions. This is sometimes unjustly objected to statistics, as if it were a defect peculiar to them. That facilities for deception are afforded by statistics

cannot be denied; but fallacies of this kind, like all others, are open to scrutiny and exposure. Reliance need not be placed upon statements of facts nor on numbers, unless supported by evidence; and inferences from them should only be admitted according to the rules by which all sound reasoning is governed. Fallacies are difficult to detect in proportion to the ingenuity of the sophist and the ignorance or inexperience of his opponents; but in political matters, opposite theories and opinions are maintained with equal ability, and facts and arguments are investigated with so much jealousy, that, in the end, truth can hardly fail to be established. Neither does any suspicion of partiality attach to such facts as are collected by a government without reference to particular theories. Until some one has shown the value of noting a certain class of facts with a view to his own inquiries, no pains are taken to obtain information of that nature from the best sources; but as soon as the importance of seeking any data is acknowledged, the collection of them becomes the business of impartial persons. The statist must be acquainted with the purposes to which the facts collected and arranged by him are likely to be applied, in order that the proper distinctions and details may be noted in such a manner as to give the fullest means of analysis and inference; but his services are greatest when he does not labour in support of a theory.

It thus becomes part of the business of government to apply all the means in its power in aid of statistics, not only for the administration of the affairs of state, but also for the improvement of political science. Abundance and accuracy must be the object of a government in collecting statistical facts.

We would lay much stress upon the collection of facts by the supreme power, because the classes of facts most important in political inquiries can scarcely ever be searched out by other persons, who have not access to the offices of government, and who are without authority to demand information; while the government has ample means at its disposal, and can, without difficulty, and in the ordinary course of administration, obtain statis-

tical information of the highest value. In this and many other countries the respective governments are applying themselves earnestly to statistical investigations. In England a statistical department has been established at the Board of Trade to collect and arrange all the documents of a statistical nature that can be obtained through any department or agency of government. The already organised departments of the French government have abundance of statistical materials systematically collected, which they never fail to arrange in a very judicious manner, and to analyse with much ability. Great credit is due to the Belgian government for the diligence with which in several departments have engaged in statistics; and in March, 1841, the king appointed a central statistical commission. "The object of this commission," said the minister of the interior, in his Report to the king, "will be to bring together in a common depository all the scattered information which is at present collected by the different departments of government, and it will propose models for the statements and tables employed in compiling and classifying the elements of these publications." He adds, that "if the commission carries out satisfactorily the object proposed, the government, the legislative chambers, and the country, will find in the official statistical publications, authentic documents calculated to throw light on all matters of discussion, to encourage useful works, and to make known annually the situation, the strength, and the material and moral resources of the kingdom." The useful results of the commission, it may be hoped, will not be confined to Belgium. The world at large is interested in the statistics of any country; and improved methods of conducting statistical inquiries must be generally applicable.

But while governments are thus engaged, there is ample room for the labours of individuals. Local statistics of all kinds are open to them. The books and records of public institutions, facts relating to particular trades, to the moral and social state of different classes of society, and other matters apparently of local interest only, often present results

not as those derived from a more extended scale. Good may often be done by a juxtaposition and comparison of matters brought together in official statistics, in a view to the illustration of science or experiments in, and by suggestions and criticism may direct the attention of it to particular branches of improvements in the mode of their on, or in the form in which they are published.

It is useless to attempt an enumeration of the various matters that are the province of statistics, but for a convenient consideration of it may be divided into—1, of statistics, or facts illustrative of the condition of a state; 2, of population; 3, of revenue; 4, of commerce, and navigation; 5, of social, and physical conditions of the people. Each of these divisions furnish ample materials for the article Censuses will serve as a guide to the use to which such may be applied, and the article R.

STATUTE. Bills which have passed the houses of lords and commons, and received the royal assent before the opening of parliament, and are sometimes collectively as forming of statutes of the realm. But a restricted application of the word is in use, by which private bills are excluded, and even public bills whose purpose is temporary. Legislation is still more restricted measures of the early parliament. The subject in question, for passed and received the royal assent belong to the class of public bills, which are not accounted in the sense in which that word is used.

A definition can be given of the deliberations in parliament which the king has signified, which are now called the statutes of the realm. We may distinguish other enactments of early

times, as follows: they were at a very remote period separated from the rest, written in books apart from the rest, and received by the courts of law as of equal authority with the ancient customs of the realm.

Probably also they have, with very few exceptions, a more general bearing than the other public acts which are found upon the rolls of parliament.

Three volumes, preserved in the court of Exchequer, and now in the custody of the Master of the Rolls, contain the body of those enactments which are called statutes. One volume contains the statutes passed before the beginning of the reign of Edward III.; and the other two, those from 1 Edward III. to 7 Henry VIII., all very fairly written. These may be considered as the manuscripts of the early statutes of superior value, if not of superior antiquity as to the earlier portions, to the many similar collections which are in the libraries of the Inns of court, of the universities, of the British Museum, and in some other depositories public and private. These numerous manuscript copies of the statutes are in substance pretty nearly the same, though some of these collections contain statutes which are not admitted into others. These books are not considered in the light of authorised enrolments of the statutes. For the authentic and authoritative copies, if any question arises, recourse must be had (1) to what are called the Statute Rolls at the Tower, which are six rolls containing the statutes from 6 Edward I. to 8 Edward IV., except from 8 to 25 Henry VI.; (2) to the enrolments of acts of parliament which are preserved at the Rolls chapel from 1 Richard III.; (3) to exemplifications and transcripts with writs annexed, signifying that they were transmitted by authority to certain courts or other parties, who were required to take notice of them, of which many remain in the Exchequer and elsewhere; (4) in those since 12 Henry VII., to the original acts in the parliament office; (5) the rolls and journals of parliament; (6) the close, patent, fine, and charter rolls at the Tower, in which statutes are sometimes found.

With the parliament of the reign of

Richard III. began the practice of printing, and in that manner publishing, the acts passed in each session. This followed very soon on the introduction of printing into England. Before that time it had been a frequent practice to transmit copies of the acts as passed to the sheriffs of the different shrievalties to be by them promulgated. The practice of printing the sessional statutes has continued to the present time.

Before the first of Richard III. the aid of the press had been called in to give extended circulation to the older statutes. Before 1481 it is believed that an abridgment of the statutes was printed by Letton and Machlinia, which contains none later than 33 Henry VI., 1455. To the next year is assigned, by those who have considered this subject, a collection, not abridged, from 1 Edward III. to 22 Edward IV. Next to these in point of antiquity is to be placed a collection printed by Pynson about 1497, who also, in 1508, printed what he entitled '*Antiqua Statuta*,' containing *Magna Charta*, *Charta de Foresta*, the *Statutes of Merton*, *Marlbridge*, and *Westminster primum et secundum*. This was the first publication of those very early statutes.

In the reign of Henry VIII. the first English abridgment of the statutes was printed by Rastall; and during that reign and in the succeeding half century there were numerous impressions published of the old and recent statutes in the original Latin and French, or in English translations. Barker, about 1587, first used the title '*Statutes at Large*.'

In 1618 two large collections of statutes, ending in 7 James I., were published, called Rastall's and Pulton's. Pulton's collection was several times reprinted with additions.

In the eighteenth century an addition, in six folio volumes, was published by Mr. Serjeant Hawkins in 1735, containing the statutes to 7 George II. Cay's edition, in 1758, in the same number of volumes, contains the statutes to 30 George II. Continuations of these works were published as fresh statutes were passed: and another work in 4to., of the same kind, was begun in 1762, well known by the designation of Ruffhead's

'*Statutes at Large*.' Pickering's edition is in 8vo., and ends with 1 George III.

None of these collections had ever been published by authority of the state, and though able men had been employed upon them, they have been thought by many competent judges not adequate to the importance of the subject, and to be liable moreover to some serious objections. This led a committee of the House of Commons, who, in 1800, were appointed to inquire into the state of the Public Records, to recommend, among other things, that "a complete and authoritative edition of all the statutes should be published." When the commission was appointed for carrying into effect the recommendations of this committee, they proceeded to the execution of this project; and finally, between the years 1810 and 1824, they produced, in a series of large volumes, a critical edition of the statutes (including the early public charters), ending with the close of the reign of Queen Anne. This is what is now considered the most authentic edition of the statutes, and it is supplied with a valuable index. It forms ten folio volumes. In the large introduction to that work there is a more particular account of the former editions of the statutes and of the means for making such a work as this complete.

The statutes passed in the Imperial Parliament of Great Britain are printed by the queen's printers, in foolscap folio, and sold at the Act Office, near Gough Square, Fleet Street, London, in separate acts, at the rate of three halfpence a sheet (4 pages) for public acts and three pence a sheet for private acts. An 8vo. edition is also published, which is sold at the rate of one penny a sheet (16 pages 8vo.) at Richards's, in Fleet Street, London, and any sheet or sheets may be purchased, so as to include one or more acts. The acts are not published separately in this edition, as they are in the folio edition.

The statutes of the realm are generally divided into two classes—Public and Private [*PARLIAMENT*, p. 468]; but they may more conveniently be distributed into three classes—Public General, Public Local, and Private. The two former only come within the term "*laws*," in the pro-

station of the term. The private only special privileges conferred ideals, or the sanction of the law to private arrangements regarding property; and before they can be, they must be pleaded before the law, like contracts, or the estates. The Public Local Statute published separately, and the standing orders of the Houses amend require that on account of its interests which they are often affect, certain preliminary notices or proceedings should take place before they are passed through their way, in contemplation of law, in the position as the Public General Statute.

Formerly all the public Statute and general, were published and numbered consecutively; in the year 1798 downwards, the Acts have been separately enumerated in distinct volumes. The legislation of a session generally fills one with general, and three or four with local statutes. The latter are not the more numerous, but from the want of detailed arrangements regarding places and circumstances, and the obligations of parties emanating from them, they are generally much less than the general statutes. As the quantity of railway and other schemes this branch of legislation rapidly increasing, the means of doing and abbreviating it have attracted the attention of law reformers, and steps have been taken to accomplish it.

It had been observed that in some clauses that are or ought to be common to all local acts. In embarking matters which should be of the same character in every one of the local Acts, different draftsmen used different expressions; and the courts of law have accounted often to give a practical effect to clauses which tended to accomplish the same thing. Great intricacy and confusion has gradually finding their way into the institutions of the country; and the legislative department of the law of the United Kingdom, Voltaire's satire on the provincial laws of France, "le *maître à tout faire* change laws as often as

he changes horses, was likely to be verified. During the session of parliament of 1845 an effort was made to remedy this defect in local legislation. Three public general Acts were passed, of which the following are the titles: 'An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public Nature;' 'An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public Nature;' and 'An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the making of Railways.' To prevent confusion, a distinct series of these Acts was passed applicable to Scotland. In each of these Acts there is a provision that it shall have reference to all local Acts for the undertakings to which it applies. "And all the provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby so far as the same shall be applicable to such undertaking; and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act." It is hoped that this arrangement may in some measure economise local legislation; but its most important influence will be in the production of uniformity in the law of joint-stock companies authorised by statute.

STATUTE (SCOTLAND). It would be difficult to explain the character of the older legislation of Scotland, the method in which it was sanctioned, or the constitution of the bodies by which it was passed. All the light that probably is to be obtained on the early history of the statute-law has lately been embodied by Mr. Innes, in his preface to the edition of the 'Scottish Statutes and old Laws,' published by the Record Commission. "Whatever," he says, "may be the case in other countries, it is not easy in Scotland to distinguish the ancient legislative court or council of the sovereign from that which discharged

the duty of counselling the king in judicial proceedings. The early lawgivers, indeed, enacted statutes by the advice of the 'bishops, earls, thanes, and whole community,' or 'through the common counsel of the Kynryk;' but during the reigns previous to Alexander III. we find the king also deciding causes in a similar assembly of magnates: while laws of the greatest importance, and affecting the interests of whole classes of the community, bear to be enacted by the king and 'his judges.' " It is probable that the practice of the assembly, legislative or judicial, of the principal barons, though irregular, was in general an imitation of the parliament of England. Before the war of independence the lands of the southern districts of Scotland had been in a great measure partitioned among Norman adventurers, some of whom owed a double allegiance to the crowns both of England and Scotland; and it was natural that they should bring with them the practices and opinions of the country with which they were earliest connected. A large proportion of the lowland population of Scotland were at the same time Saxon refugees from England. So early as the reign of David I. (1125) we begin to find that the municipal corporations had a voice in the ratification of the laws. "The parliament," says Mr. Innes, "assembled by John Balliol at Seone, on the 9th of February, 1292, was probably the first of the national councils of Scotland which bore that name in the country at the time, although later historians have bestowed it freely on all assemblies of a legislative character. We have no reason to believe that any change in its constitution occasioned the adoption of the new term, which soon became in Scotland, as in England, the received designation of the great legislative council solemnly assembled. It was not till a few years later, on occasion of negotiating an alliance with France, that Balliol, probably at the desire of the French king, procured the treaty to be ratified, not only by the prelates, earls, and barons, but by certain of the burghs of his kingdom. That treaty was finally ratified at Dunfermline on the 23rd day of February, 1295; and the seals of six burghs were then affixed

to the deed, along with those of four bishops, four monasteries, four earls, and eleven barons. Notwithstanding this very formal ratification, however, it may be doubted, both from the peculiar phraseology of the deed itself, and from the silence of historians as to any meeting of a parliamentary nature in which it could have been voted, whether the parties stated as consenting, and especially whether representatives of those six burghs, were actually present as in a national assembly or parliament."

The acts which were thus sanctioned—sometimes, perhaps, by the separate adhesion of the principal interests of the country, sometimes in assemblies—were of a mixed character. Some were judgments in particular disputes, accompanied probably by the announcement of a principle on which such questions should thenceforth be decided; others were acts of executive authority; and others might be regulations having the character of fixed and general laws. When these proceedings related to matters of private right, the recording instrument would be put into the hands of the party interested. "When the proceedings of the national council," says the authority already cited, "related to matters of a more public nature, such as negotiations with foreign states, its earliest records were probably of a similar kind, and consisted of nothing more than the indentures or other diplomacy which embodied the results of its deliberations. Perhaps the earliest instance of this kind that now remain are those important deeds of the reign of Alexander III., when, however, a more artificial system must have been beginning to prevail. It would be still more interesting to ascertain the modes in which the more general ordinances and laws of the realm were enacted and recorded; but on this head the loss of every original document has left us entirely to conjecture. Judging, however, from the mutilated and imperfect transcripts of a later age, and from the analogy of the other states of Europe, it would appear that the more important and general statutes were framed into short capitulars, and legrossed into a writ, addressed, in the name of the king, to the chief ministers

law in the different districts of the law, requiring the publication and revision of them. The laws of the 12th, the assizes of David I. and of Henry I., and the statutes of Alexander I. found in the old manuscript collections of lawyers, seem to be the fragments of various capitulars of this kind. The assizes of David I., 'Assise Regie I.', are reported to be the oldest fragments of legislation in Scotland, and are not entirely traceable to so early a period as the reign of the king whose name they are associated. The 'Leges Quatuor Burgorum' constitute the oldest systematic collection of laws. They too may be referred to the reign of David, and though they gave him the credit of having introduced the whole system of the municipal corporations, it is more likely that some of the laws embodied the privileges and restrictions which had gradually come into existence with the growing influence of the burghs. The coincidence between the early vestiges of Scottish legislation and the old law of England is remarkable. In the assize, and in the burgh laws, the same phraseology is frequently used, which still belongs to the law and practice of England, but has long been disused in Scotland. Indeed, it is very clear that, at the attempt of Edward I. to bring the law of Scotland, there was much hardship in tone and spirit between the two countries, and that Scotland generally followed or accompanied England in her legislative progress. There is a still more remarkable coincidence of legislation in the celebrated *Regiam Majestatem*, the earliest code of the old laws of Scotland.

It was, like the fragments mentioned above, attributed to David I., who obtained the character of the Justiciar of Scotland; but it is undoubtedly of later date. In the sixteenth and seventeenth centuries it was very popular, as an early national code; but it was frequently discovered to have many errors in common with the compilation, *Legibus et Consuetudinibus Anglie*, ascribed to Ranulph de Glanvill, Justiciar of England, and then it acquired the reputation of being a code prepared by Edward I., for the purpose of

subjecting Scotland to the law of England. "Upon an accurate collation of the books," says Mr. Innes, "it appears that the fourteen books of Glanvill contain in systematic arrangement, with some inconsiderable exceptions, the same matter, almost in the same words, which the compiler of the 'Regiam' has put into four books (in imitation of the Institutes of the Roman law), but divested of all systematic order. Many minute variations are found, and when these are intentional, they are plainly caused by a desire to suit the text of the English law-book to the local circumstances of Scotland; when they have happened accidentally, the vitiated or unintelligible text of the Scottish book is readily corrected by a comparison with the English author. There are, however, chapters in the 'Regiam' which are not in Glanvill. Part of these are extracts from the civil and canon law, and the remainder, joined inartificially to the surrounding text, appear to be genuine chapters of ancient Scotch laws, most of which can be traced to their sources in the statutes of the early kings now collected." Mr. Innes does not believe in the theory that the 'Regiam' was prepared under the authority of Edward I., but thinks its resemblance to the English compilation may be attributed to the spirit of imitation.

The '*Regiam Majestatem*,' so named from the words with which it commences, is, along with the burgh laws, and other vestiges of early legislation, printed in the first volume of the edition of the Scottish statutes issued by the Record Commission. None of the contents of this first volume, however, come within the description of the accepted statute law of Scotland. They are curious vestiges of constitutional history; and if it be necessary for ascertaining the just application of any settled principle of law by a reference to its origin, these old collections are sometimes referred to; but they are not admitted as direct authority in the substance of the law. In 1565 a commission was issued for the collection and publication of the statute law, and they speedily published a series of statutes reaching from 1424 to 1564. It is at the former date that the statute law, properly speaking, commences, and it

proceeds thence in a regular series to the Union with England. Several of the most important statutes still in force—as, for instance, that which secures to the agricultural tenant the continuance of his lease, notwithstanding the death of the landlord by whom it may have been granted—date back to the earlier part of the fifteenth century. The Scottish acts are referred to by the date of the parliament in which they are passed, and their numerical order; as, 'The Act 1424, c. 25,' 'The Act 1661, c. 16.' The early statutes are brief and sententious, and were admired by Bacon for "their excellent brevity." The following are two successive Acts of the Parliament of 1424, given in full:—

"Item, it is decreetied be the hail parliament, and forbidden be our soveraine lordis the king, that ony leagues or bandes be maid amongst his lieges in the realme; and gif onie has bene maid in time bygane, that they be not kept nor holden in time to cum."

"Item, it is ordained that na horse be sauld out of the realme, quhill at the least they be three yair sould outgane, under the paine of eachette of them to the king."

From the date of the accession of Bruce, after the war with England, the Scots long entertained a feeling of national jealousy and enmity towards England; and though some of the kings introduced Southern practices, we do not find that steady imitation and adoption of the constitutional movements of the English parliament which characterise the earlier period, but rather an isolated creation of, and adherence to, national peculiarities. The Scottish parliament was not divided like the English into two houses, but the three estates—the clergy, the barons and other freeholders, and the burghs—formed one assemblage. The method of conducting legislative business was very different from that which came into use in England. At the commencement of the sittings a committee was chosen, called Lords of the Articles, who had the duty of preparing and arranging the matters to be laid before the House for its approval. It thus appears to have generally happened that the full assemblage only

met on the first and the last day of a session: on the former the basis of the articles were chosen; on the latter, the statutes or other proceedings reported by this committee were voted on, and sanctioned or rejected. The royal assent was given by touching the act with the sceptre; but some constitutional writers maintain that this was a mere court ceremony, and that an act which had passed the three estates became law without sanction from the king. It became a principle which widely distinguished the legislation of Scotland from that of England, that in the former country statutes might cease to be law by merely falling into desuetude. Of the statutes of the Scottish parliament, those only are now law which are said to be *in statu domantid*. By this principle the statute law has silently modified itself to the character of the times; and, though no longer repealed, the barbarous laws of perjury, bigamy or violence have ceased to be enforceable. Since the Union of 1707, it has been considered, in conformity with the English doctrine, that an act passed by the British parliament must be held to be law, and judicially enforceable, until it is repealed.

The law of Scotland, the judicial and executive system, and the constitutional polity, being quite distinct from the corresponding institutions of England, its statutes are from time to time passed by the British legislature solely applicable to Scotland, prepared by persons professionally acquainted with the institutions of that part of the empire. The former laws of Scotland were formerly isolated, but now, with few exceptions, are embodied in one series of acts applying to the United Kingdom. In matters of national policy, and frequently in the criminal law and in legislation for social economy, acts are made applicable both to England and Scotland at the same time. In these departments of legislation much confusion has arisen from its being left doubtful whether a statute applies to Scotland, or from terms being used which are not the proper technical terminology of Scottish law. This confusion has been a considerable source of difficulty in Scotland; and, on every last

from the want of uniformity in the edition of the statutes, hitherto unknown from any rule serving as a criterion for the extension of such acts to Scotland. In many cases—such as the Tithes Commutation Act, the institutions to which the legislation refers distinctly limit its application to England. In other instances, however, general laws are made which are applicable to Scotland as to England, while the machinery by which the laws are to be enforced is to be supplied only in England. In many instances these acts have only been capable of enforcement in Scotland by reading, instead of English institutions, those of Scotland which most nearly correspond to them—as, by substituting “The Court of Session” for “The Courts of Westminster.” The remedy for this evil appears to be, to incorporate in each act a clause stating the territorial extent of its application; and, when it is intended that it shall apply to Scotland, to have clauses especially applicable to its enforcement in that part of the Kingdom.

STATUTE (IRELAND). In Ireland, the method by which the early irregular enactments, called Parliaments, passed by the Irish, appears to have been a close imitation of the English practice. The earliest printed statutes begin in the year 1310—3 Edw. II. After five centuries of this parliament there is no record until the year 1429, although it is known in history that repeated parliaments were held in the interval. Many of these statutes are characteristic indications of the state of the country, and throw light on the domination of the English over the natives—the 25 Hen. VI. c. 4, ‘An Act, that whosoever shall be taken for an Englishman, shall not use a Beard upon his upper lip; the Offender shall be taken for an Irish Enemy.’ 28 Hen. VI. c. 3, ‘Act, that it shall be lawful for any Englishman to kill or take notorious thieves, and Thieves found robbing, burgling, or breaking Houses, or taken in the manner;’ and in later times (7 Wm. III. c. 21), ‘An Act for the better suppressing of Tories, Robbers, and

Rapparees; and for preventing Robberies, Burglaries, and other heinous Crimes.’ The Statute of Drogheda, commonly called Poyning’s Law, passed in 1495 (10 Hen. VII.), had a marked influence on the later legislation and constitutional history of Ireland. By chap. 22 it was enacted, that all the acts then or late passed in England, “concerning or belonging to the common and public weal of the same,” should be law in Ireland. By chap. 4 it was provided, that no parliament should afterwards be held in Ireland until the lord-lieutenant and council had certified the king of the causes and considerations for holding it, and of the acts proposed to be passed at it, and a licence had been obtained from England accordingly. Thus no measure could be proposed for the adoption of parliament until it had first received the royal assent in England. It is believed that this badge of servitude prevented the passing of many exterminating acts, which, in times of anarchy, discord, or tyranny, the Irish ministry, and their partisan-parliaments, would have readily passed. This act was repealed, and the independence of the Irish legislature restored by the celebrated measure of 1783. By the Act of Union, in 1800, the Irish Parliament was merged in the United Parliament of Great Britain and Ireland. [PARLIAMENT OF IRELAND.]

STATUTE OF FRAUDS. This name is applicable to any statute the object of which is to prevent fraud, but it is particularly applied to the 29 Car. II. c. 3, which is entitled the ‘Statute of Frauds and Perjuries.’ One object of the statute was to prevent disputes and frauds by requiring in many cases written evidence of an agreement. Before the passing of this statute many conveyances of land were made without any writing as evidence of the conveyance. An estate in fee-simple could be conveyed by livery of seisin, accompanied with proper words, and a use could also be declared by parol. No writing was necessary to convey any estate in possession, for such estate is technically said to lie in livery; but a reversion could only be conveyed by deed. The Statute of Frauds declared that all leases, estates, and in-

terests of freehold or terms of years or any uncertain interest in any lands or hereditaments, made by livery and seisin only, or by parol, and not put in writing and signed by the parties, &c., shall have the force of leases or estates at will only. But leases for not more than three years, whereon the rent reserved shall be two-thirds of the full improved value of the thing demised, are excepted by the statute. Further, no lease estates, or interest either of freehold or terms of years, or any uncertain interest, not being copyhold or customary interest, shall be assigned, granted, or surrendered except by deed or note in writing. Another section of the statute provides that all declarations or creations of trust or confidences of any land, tenements, or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or they shall be void. The 5th section of this statute declared that all devices of lands or tenements, as more particularly described in this section, should be in writing and signed in the manner here prescribed by three or four credible witnesses; and the 6th section related to the revocation of a devise in writing of lands or tenements. Both these sections are repealed by the last Wills' Act, 1 Vict. c. 26, which makes alterations in other provisions also of the Statute of Frauds.

There are several other important provisions in this statute, which may be omitted here, as the object is to show merely that the purpose of the statute is to prevent fraud by requiring the evidence of writing, which is a better kind of evidence than men's memory.

STATUTE MERCHANT. [BURNEL, ACTON, STATUTE OF.]

STATUTE STAPLE. [STAPLE.]

STATUTES OF LIMITATION.

There appear to have been no times limited by the common law within which actions might be brought; for though it is said by Bracton (lib. 2, fol. 228), that, "*omnes actiones in mundo infra certa tempora limitationem habent*," yet with the exception of the period of a year and a day, mentioned by Spelman (Gloss., 32), as fixed by the ancient law for the

heir of a tenant to claim after of his ancestor, and for the make his claim upon a disseisin limitations of actions in the Ed have been established by statute remarkable periods were first fixed within which the cause of action have arisen. Thus in the time III., the limitations in a writ which was then from the time L., was by the Statute of Mer reduced to the time of Henry II. the Statute of Westminster, 1, period within which writs of right be sued out was brought down time of Richard I. (Co. Lit. 1.

Since the 4 Hen. VII., c. 2, limited the time within which might make their claim to land if a fine had been levied with prods various statutes have been passed purpose of limiting the time within actions and suits relating to real may be commenced. The 21 J. 16, limited the period for all formedon to twenty years; and enacted generally that no person make entry into any lands, but twenty years next after his right accrued. The act contained a list the rights of certain persons terminated.

By the 9 Geo. III. c. 16, the the crown to sue or implead manors, lands, or other hereditaments (except liberties or franchises) was to sixty years. Before this act, that *nullum tempus occurrit regi* was universal; and it still prevails as a of law, except where abridged by The same maxim applies to the Cornwall, which, though it vests crown from time to time, so long is no eldest son of the king, person entitled to the dignity, as in the above statute.

The next statute upon this is the important act of the 3 and IV. c. 27, by which great changes made in the remedies for trying to real property, and which embrace greater part of the present law of actions relating thereto.

By section 2, no person can entry or distress, or bring an action

y land or rent, but within
s after the right to make such
stress, or bring such action,
to the claimant, or some person
om he claims. The meaning
"land," "rent," and "person,"
l in the first section of this
sufficient to state here the
ect of the act. The explana-
rticular provisions belongs to

istrator for the purposes of
claim from the death of the
et, 6). This section removes,
poses of the act, that distinc-
existed, under the old law,
ctors and administrators, by
right of the former was com-
mencement from the death of
and that of the latter from
administration.

ments contained in the sec-
the 3rd to the 15th included,
l to remove one of the great
hat attended the investigation
der the old law, namely, the
on of the time at which ad-
mission commenced. Whether
was adverse or not, was fre-
quation of fact to be deter-
jury, and subject to great un-
and the question was often
arranged by the various rules
well as by the principle fol-
lowed, that possession, rightful
mencement, did not become
r adverse as against the true
being continued beyond the
bich the right of the party in
eased.

nder the disability of infancy,
idiocy, lunacy, unsoundness
absence beyond seas, or per-
ig under them, notwithstand-
ed of twenty years shall have
to be allowed ten years after
o whom the right first accrued
to be under any disability or
which shall have first hap-
p. 16). It is to be observed
onment is not a disability un-
t, as it was under 21 Jac. I.

entry, distress, or action is to
brought by any person under

disability at the time of his right accru-
ing, or by any person claiming under
him, but within forty years from the time
at which the right first accrued, though
such disability should have continued
during the whole of such forty years, or
although the term of ten years from the
time at which the person to whom the
right first accrued ceased to be under any
disability, or died, should not have ex-
pired (sect. 17).

In the case of a person under disability
at the time that his right accrued dying
under such disability, no further time be-
yond the said term of twenty years next
after the right accrued, or the said term
of ten years after the death of such person,
is to be allowed by reason of the disability
of any other person (sect. 18).

No part of Great Britain and Ireland,
nor the adjacent islands, is to be deemed
beyond seas, within the meaning of the
act (sect. 19).

No suit in equity is to be brought for
the recovery of any land or rent but
within the time when the plaintiff, if
entitled at law, might have brought an
action (sect. 24). This clause confirms
the doctrine already established in courts
of equity.

In cases of express trust, the right of the
cestuy que trust to bring a suit against a
trustee, or person claiming through him,
is not to be deemed to have accrued
till a conveyance has been made to a
purchaser for a valuable consideration,
and then only as against such purchaser
and persons claiming under him (sect.
26). In cases of express trust, no time,
as between the *cestuy que trust* and trustee,
can operate as a bar to the right of
the former; and the above-mentioned
clause applies as between the *cestuy que
trust* and strangers only. The possession
of the trustee is that of the *cestuy que
trust*, and the possession of the *cestuy que
trust* cannot be adverse to the trustee,
unless where there has been actual ouster
of the trustee by the *cestuy que trust*, or
where the latter denies the title of the
trustee. Though no time bars a direct
trust, as between trustee and *cestuy que
trust*, a court of equity will not allow a
man to make out a case of constructive
trust at a great distance of time, and after

gence, might have been discovered; but nothing in this clause is to affect the title of a purchaser for valuable consideration who was not a party to the fraud, and had, at the time of his purchase, no notice of such fraud (sect. 25). This principle had already been established in courts of equity.

By section 36, all real and mixed actions, except Ejectment, and the actions of Dower and Quare Impedit, were abolished after the 31st of December 1834.

Since the 31st of December, 1833, no money secured upon land by any mortgage, judgment, lien, or otherwise, or charged upon land by way of legacy, can be recovered by action or suit, but within twenty years after the right to receive the same accrued, unless in the meantime some part of the money or interest thereon has been paid, or some acknowledgment in writing of the right thereto signed by the person liable to payment or his agent, to the person entitled thereto or his agent; in which case the action or suit must be brought within twenty years after such payment or acknowledgment (sect. 40). This clause is a statutory confirmation of what was formerly established by decision as to money secured upon land; namely, that possession of the land by the mortgagee or person otherwise liable for

the latter case his right of entry, or action for the recovery of the land during the same period secured by the 14th section; but it being in doubtful whether the 2nd section bars this right, when the act relies taking the case out of the statute payment of principal or interest Wm. IV. and 1 Vict. c. 28, was reserving to the mortgagee the right of entry, distress, and action for the recovery of the land for twenty years after the last payment of principal or interest, although more than twenty years have elapsed since the right first accrued.

Arrears of dower, or damages for arrears, are not to be recoverable by action or suit beyond six years before the commencement of the action or suit for the act, there was no limitation at law or in equity to a claim for arrears of dower during the life of the tenant (sect. 41).

Since the 31st day of December 1833, no arrears of rent or of interest in, or of any money charged in any manner on, land or rent, or any damages in respect of such arrear of rent or interest, recovered by any distress, action, or otherwise, but within six years next after the arrears respectively became due, or next after the acknowledgment in writing of such

as, though it exceed the term of years (sect. 42). It had already been established in equity, by analogy to the law, that an account of rents and profits could not go back beyond six years before the filing of the bill, and in cases where a party had neglected his rights, and where there was no disability on the one side, or fraud on the other, a court has refused to carry the account back than the filing of the bill. (1 and H., 130.) This discretionary fiction seems to be within the saving of the 27th clause of the act. It seems the above section refers to rents and profits upon land only, to which it had held that the former statutes did apply, and not to conventional rents (e.g., *N. C.*, 588), the limitations which are provided for by the 21 *v.* 16, s. 3, and the 3 and 4 *Wm.* IV., s. 3.

This clause contains no exception in the case of persons under disabilities.

Limitations as to tithes and other ecclesiastical property are now regulated by 3 and 4 *Wm.* IV., c. 100; and 3 and 4 *Wm.* IV., c. 27.

As to limitations as to advowsons, the 3 and 4 *Wm.* IV., c. 27, s. 30, enacts from the 31st day of December, 1833, *quare Impedit* or other action, nor suit to enforce a right of presentation to a church, vicarage, or other ecclesiastical benefice, is to be brought after the expiration of the period during which clerks in succession shall have held same, all of whom obtained possession lawfully to the right of the person claiming of the person through whom he claims, if the times of such incumbencies shall amount to sixty years, and if, then after such further period as the times of such incumbencies shall make up the period of sixty years.

Limitations as to other incorporeal hereditaments are now mainly regulated by 2 and 4 *Wm.* IV., c. 71. [PRESCRIPTION.]

As to Limitations of Personal Actions and Suits relating to Personal Property.

Of actions of assault and battery.

By the 21 *Jac.* I. c. 16, s. 3, all actions of trespass, of assault, battery, wounding, or any of them, must be

commenced and sued within four years after the cause of action arises.

2. Of actions of slander.

By the 21 *Jac.* I. c. 16, s. 3, all actions on the case for words must be commenced and sued within two years next after the words spoken.

3. Of actions arising upon simple contract, and actions founded in wrong.

By the 21 *Jac.* I. c. 16, s. 3, all actions of trespass *quare clausum fregit*, actions of trespass, detinue, trover, and replevin for taking away goods and cattle, actions of account and upon the case (except merchants' accounts), actions of debt grounded upon lending or contract without specialty, and actions of debt for arrearages of rent, must be commenced and sued within six years next after the cause of action arises.

Formerly there was no limitation applicable to a suit for a legacy, though in some cases presumption of payment was admitted; but the 3 and 4 *Wm.* IV., c. 27, s. 40, which fixes the period of limitation to twenty years, is applicable to all legacies, whether charged on real estate or not. Before the statute of the 3 and 4 *Wm.* IV., c. 42, there was no remedy for injuries done to the real estate of a person deceased, in his lifetime, nor against the estate of a person deceased, in respect of wrongs done by him in his lifetime to the property of another; but now, by sect. 2, executors may bring an action of trespass, or trespass on the case, for an injury done to the real estate of a deceased person in his lifetime, and for which he might have maintained an action, at any time within a year after the death of such person; and any such action may be brought against the executors or administrators of a person deceased, for an injury done by him in his lifetime to the real or personal property of the plaintiff, within six calendar months after they shall have taken upon themselves the administration of the deceased's estate, provided in each case that the injury was committed within six months of the death of such person.

The limitation as to arrears of rent in the statute of James does not apply to rents reserved by indenture.

To settle questions which arise upon the effect of subsequent promises and

acknowledgments, it was enacted by 2 Geo. IV. c. 14, s. 1, reciting the act of James, that in actions of debt, or upon the case, grounded on any simple contract, no acknowledgment should be deemed sufficient, unless it were in writing, signed by the party chargeable thereby; and that where there were two or more joint contractors, or executors, or administrators of any contractor, the written promise of one or more of them should not bind the others. But it was expressly provided that nothing in the act contained should alter, take away, or lessen the effect of any payment of principal or interest by any person whatsoever; so that it would seem that this species of acknowledgment will, according to the old doctrine (2 Saund., 63, *j. n.* (t)), be effectual, not against the party making it only, but his co-contractor. Also (by sect. 6) no indorsement or memorandum of payment upon a promissory note, bill of exchange, or other writing made by or on behalf of the party to whom payment should be made, should be deemed proof of such payment to take the case out of the statute; and (sect. 4) that the act of James and that act should apply to simple contract debts alleged on the part of a defendant by way of set-off.

4. As to actions arising upon specialty.

Before the 3 and 4 Wm. IV. c. 42, there was no statutable limitation to actions upon specialties, though the courts held that payment was *prima facie* to be presumed after twenty years.

By the 3rd section of the above act actions of debt for rent upon an indenture of demise, actions of covenant or debt upon bond or other specialty, and actions of debt or *scire facias* upon recognizance must be commenced and sued within twenty years after the cause of such actions or suits arises. If the 3 and 4 Wm. IV. c. 27, s. 42, applies to actions on specialty, it is so far repealed by this act; but the better opinion seems to be that the former act applies to rents which are a charge upon land only, and not to conventional rents, whether reserved by indenture or otherwise. (2 Bing. N. C., 683.)

By sect. 5, it is provided, in accordance with the enactment of 2 Geo. IV. c. 14, as to actions on simple contract, that if

any acknowledgment has been made, either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or his agent, or by part payment, or part satisfaction, or account of any principal or interest due thereon, the person entitled may bring his action for the money remaining unpaid, and so acknowledged to be due, within twenty years after such acknowledgment, or part payment; and in case of the plaintiff being under any of the disabilities mentioned in the 4th section of the same act, or absence of the defendant beyond seas at the time of such acknowledgment being made, then within twenty years of the removal of such disability, or the return of the defendant from beyond seas.

III. Of Limitations of Actions on Penal Statutes.

By the 31 Eliz. c. 5, s. 5 (which act repeals a previous one, the 7 Hen. VIII. c. 3, upon the same subject), all actions, suits, bills, indictments, or informations for any forfeiture upon any statute passed, whether made before or since the act, whereby the forfeiture is limited to the queen, her heirs, and successors only, must be brought within two years after the commission of the offence; and all actions, suits, bills, indictments, or informations for any forfeiture upon any penal statute, whether made before or since the act (except the statute of village), the benefit and suit whereof is limited to the queen, her heirs, and successors, and to any other that shall prosecute in that behalf, must be brought by the person suing within one year after the commission of the offence; and in default of such prosecution, the same may be brought by the queen, her heirs, or successors, at any time within two years after the end of that year; and any action, suit, bill, indictment, or information brought after the time limited is to be void. It is provided that where a shorter time is limited by any penal statute, the prosecution must be within the time so limited.

A prosecution by the party grieved was not within the restraint of the statute; but now, by the 3 and 4 Wm. IV. c. 42, s. 3, all actions for penalties demanding sums of money given to the party grieved

any statute now or hereafter to be in force must be brought within two years of the cause of such actions or suits, provided that nothing in that section did extend to actions the time for bringing which is especially limited by statute. The saving in that act in case of the disability of the plaintiff, the absence of the defendant beyond, and also the limitation as to further proceedings after judgment or outlawry used, apply to actions by the party sued.

By the 21 Geo. II. c. 44, s. 1, actions justly due of the peace and common law or others acting in obedience to warrants are limited to six calendar months.

There is no time limited by any statute indictments for felonies and other misdemeanours when there is no forfeiture to the queen or to the prosecutor, the acts of general pardon which have been passed from time to time have effect of limitations. The last of such was the 20 Geo. II. c. 52.

F. Of the exceptions to the operation of Statutes of Limitation.

The exceptions in the several statutes of limitation may be stated generally to comprehend infants and other persons or disabilities.

In cases of express trust, the statutes of limitation have no application as between trustee and cestui que trust; and in cases of fraud they operate only from the time of the discovery of the fraud.

A debtor creates by his will a trust of his personal estate for the payment of debts, such a trust will prevent the debt from operating upon a debt not paid at the time of the creation of the trust, that is, from the death of the testator.

In general, in personal actions the statutes of limitation do not run against the estate of a person who has died intestate, in respect of claims accrued after death, until the appointment of an administrator, though the rule is altered by 3 & 4 Wm. IV., c. 27, s. 6, as to debts to charitable interests in land, and extends also as to money charges on land, besides arrears of dower and arrears of rent or interest of money charged on land. And if there be no personal repre-

sentative against whom actions may be brought, the rights of claimants against the deceased's estate are unaffected by the statutes, as no laches can be attributed to them until an administrator is appointed. (5 B. and Ald., 704.)

A charity is never considered in equity as absolutely barred by the statutes, or by any rule of limitation analogous to them; but the court takes notice of a long adverse possession in considering the effect and construction of instruments under which claims are set up on its behalf. (2 J. and W., 321.)

By the 3 and 4 William IV. c. 27, s. 43, persons claiming tithes, legacies, or any other property for the recovery of which an action or suit at law or in equity might have been brought, cannot bring a suit or other proceeding in any spiritual court for the same but within the period during which they might have brought their action at law or suit in equity. Also, by the 27 Geo. III. c. 44, s. 1, suits in the Ecclesiastical Court for defamatory words must be commenced within six calendar months, and (sect. 2) suits for fornication, incontinence, or for striking or brawling in a church or churchyard, must be brought within eight calendar months after the commission of the offence. But, except in these cases, it does not appear that the Statutes of Limitation have any application to suits in the Ecclesiastical or Admiralty Courts.

The Statutes of Limitation must in general be pleaded positively by the defendant in any action at law, who wishes to take advantage of them, and it has been held in equity that unless the defendant claims the benefit of the statutes by plea or answer, he cannot insist upon them in bar of the plaintiff's demand. (Miff., 277.)

(Hacon, 4th, art. 'Limitation,' *Charity's Statutes; and Report of Real Property Commissioners.*)

STERLING, a word applied to all lawful money of Great Britain. In Rodding's work on 'Coinage,' vol. I., p. 13, 4th edit., the various supposed derivations of the word are given, with a list of the old writers who have adopted each. Rodding himself, after an elaborate examination, says, "its origin and derivation are still

unsettled," but he inclines, with the majority of the authorities, to attribute it to an abbreviation of Esterlings, people of the north-east of Europe, some of whom were employed in the twelfth century in regulating the coinage of England. The word was not in use before the Conquest, though some have given it a Saxon derivation. In the twelfth century its use was common, and in the following century a writer ascribes its origin to the Esterlings. From the twelfth century English money was designated all over Europe as sterling. By the statute called the Assize of Weights and Measures, which is attributed, in some copies, to the reign of Henry III. (1216-1272), in others to that of Edward I. (1272-1307), "the king's measure was made so that an English penny, which is called the sterling, shall weigh thirty-two grains of wheat dry in the midst of the ear." This is the origin of the pennyweight, though it now weighs twenty-four grains.

STEWARD, LORD HIGH, OF ENGLAND, one of the ancient great officers of state. Under the Norman kings and the early kings of the Plantagenet line it seems to have been an hereditary office. Hugh Grentmesnell held the office in the reign of Henry II., and it passed with his daughter and co-heir in marriage to Robert de Bellomont, who was earl of Leicester. Robert's son held it, on whose death without issue it passed to the husband of his sister, the elder Simon de Montfort, who had also the dignity of earl of Leicester. From him it passed to his son, the second Simon de Montfort, who was slain at the battle of Evesham in 1265. This high dignity then reverted to the crown, but was immediately granted to Edmund, king Henry the Third's younger son, together with Montfort's earldom of Leicester, in whose descendants, the earls of Lancaster and Leicester, it continued, and in the person of Henry the Fourth, who was duke of Lancaster, was absorbed into the regal dignity.

From this time no person has been invested with this high dignity as an heritable possession, or even for his own life, or during good behaviour. It is only conferred for some special occasion, and

the office ceases when the business which required it is ended; and this occasion has usually been when a person was to be tried before the House of Peers. On the occasion there is a lord high steward created, who presides, and when the proceedings are closed, breaks his wand, and dissolves the court; but if the trial take place during the session of parliament, though a lord steward is appointed, it is not considered as his court, for he has no judicial functions and only sits with the rest as a peer, although he presides.

STOCK BROKER. [BROKER.]

STOCKS. [NATIONAL DEBT.]

STOPPAGE IN TRANSITU is the seizure by the seller of goods sold on credit during the course of their passage (transitus) to the buyer. This principle is said to have been established about 1690 in the Court of Chancery (2 Vern. 203); and it has since been acknowledged in the courts of common law. The transitus is defined to be the passage of the goods to the place agreed upon by the buyer and seller or the place at which they are to come into the possession of the buyer. This definition does not mean that the term transitus implies continuous motion: goods are in transitu while they are at rest, if they are still on the road to the place to which they have been sent. This doctrine of stoppage in transitu entitles a seller, in case of the insolvency or bankruptcy of the buyer, to stop the goods before they come into the buyer's possession. The right of stoppage in transitu is not confined to cases of buying and selling. A factor either at home or abroad, if he consigns goods to his principal by the order of the principal and has got the goods in his own name or on his own credit, has the same right of stoppage in transitu as if he were the seller of the goods. Questions of stoppage in transitu sometimes involve difficult points of law. The right of stoppage implies that the goods are in the possession of the seller or factor when he exercises this right. Accordingly the law of stoppage involves the law of possession of moveable things. The following references will supply all the necessary information on these subjects. (Albion, 6)

Crass, On Lien and Stoppage in transit; Smith's Leading Cases, Jackson v. Mason; Russell's on the Laws Relating to Factors & Brokers.)

SUBSIDY. [FEUDAL]

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FEUDAL. [FEUDAL]

limited periods, and express provision was made that it should have intermission, and vary, lest the king should claim it as his duties. The duties of tonnage and poundage were granted to Henry V. for his life with a proviso that it should not be drawn into a precedent for the future. However, notwithstanding the proviso, it was never afterwards granted to any king for a less period. These duties were farmed while Lord Coke was commissioner of the treasury, for 160,000*l.* a year. In the course of the argument in the case of ship-money in 13 Charles I., the king's duties are said to amount to 300,000*l.* This probably was the aggregate of the customs and tonnage and prisage.

Subsidy in its more usual and limited sense consisted of a rate of 4*s.* in the pound on the lands, and 2*s.* 8*d.* on goods, and double upon the goods of aliens. The taxes called tenths, fifteenths, were the tenth or fifteenth part of the value of moveable goods. Other portions, such as the fifth, eighth, eleventh part, were sometimes, but rarely, also levied. These taxes seem to have had a parliamentary origin. There are no appearances of the king ever having attempted to collect them as of right. Henry III. received a fifteenth in return for granting Magna Charta and the Charta de Foresta. In the earlier periods never more than one subsidy and two fifteenths were granted. About the time of the expectation of the Armada (31 Eliz.), a double subsidy and four fifteenths were granted. The then chancellor of the exchequer, Sir Walter Mildmay, when moving for it, said, "his heart did quake to move it, not knowing the inconvenience that should grow upon it." The inconvenience did grow very fast, for treble and quadruple subsidies and six fifteenths were granted in the same reign. These grants seem to have been at intervals of about four years at that period. Subsidies and fifteenths were originally assessed upon each individual, but subsequently to the 8 Edward III., when a taxation was made upon all the towns, cities, and boroughs, by commissioners, the fifteenth became a sum certain, being the fifteenth part of their then existing value. After the fifteenth

was granted by parliament, the inhabitants rated themselves. The subsidy, never having been thus fixed, continued uncertain, and was levied upon each person in respect of his lands and goods. But it appears that a person paid only in the county in which he lived, even though he possessed property in other counties. And, as Hume observes, probably where a man's property increased he paid no more, though where it was diminished he paid less. It is certain that the subsidy continually decreased in amount. In the eighth year of the reign of Elizabeth it amounted to 120,000*l.*, in the fortieth to 78,000*l.* only. Lord Coke estimates a subsidy (probably in the reign of James I. or Charles I.) at 70,000*l.*; the subsidy raised by the clergy, which was distinct from that of the laity, at 20,000*l.*; a fifteenth at about 20,000*l.* Eventually the subsidy was abolished, and a land tax substituted for it.

(2 *Inst.*; 4 *Inst.*; 'Bate's Case,' &c., 2 *State Trials*, 371, ed. 1809; 'The Case of Ship Money,' 3 *State Trials*, 826, ed. 1809; Venn's *Abstr.*, tit. 'Prerogative'; Comyn's *Dig.*, tit. 'Parliament,' 'Prerogative,') (Customs.)

SUCCESSION. This is a legal term derived from the Roman "*Successio*," which signifies a coming into the place of another, and Successor is he who comes into such place.

The Roman term signifies a coming into the place of another so as to have the same rights and obligations with respect to property which that other had. There might be *successio* either by coming into the place of a person living, or by becoming the successor of one who was dead. Gaius (iii. 77, &c.) gives instances of *successio* in the case of persons living, one instance of which is the *Bonorum Cessio* according to the *Lex Julia*. *Successio* was again either Universal or Singular. The instances of universal succession (*per universitatem*) which Gaius (ii. 97) enumerates, are the being made a person's *heres*, getting the possession of the *bona* of another, buying all a man's property, adopting a person by *adrogatio*, and admitting a woman into the *manus* as a wife; in all which cases all the property of the several persons enumerated passed at

once to the person who was made or got the *bonorum possessio*, or the whole property, or adopted a by *adrogation*, or married the &c. An instance of singular *successio* is taking of a legacy under a man's &c.

The term *Succession* is used in a different sense in the English language. We speak of the *succession* of the crown or the regal dignity, a term implies that the successor things represents the predecessor, the king, as a political person, new and upon the natural death of a king his heir immediately succeeds. The heir at law takes the descendible of his ancestor as universal successor, the executor takes the *chattels* &c. other personal property of his testator as universal successor. The general or assignees of a bankrupt or insolvent take by universal succession.

Blackstone says that "corporate aggregate consist of many persons, together into one society, and are continued by a perpetual succession of members as to continue for ever." It is to be observed that when members of a corporate body are appointed to fill up their places but they do not succeed to the office of the Roman sense of succession—they simply become members of the corps. But it has been established in some cases [Corporations, p. 679] that the word "*successors*" implies a legislature meant to establish a corporation; and yet it is certain that a grant of land to a corporation is valid without the word "*successors*" is granted. In a feoffment to a corporation the word "*successors*" is not used. The succession in the case of a corporation sole follows the nature of the succession. In the case of a corporation aggregate there is no succession, it is a rule that a corporation may be sold by the use of the word "*successors*." A statute founded on an erroneous standing of the term "*successors*."

SUPFRAGAN. [BISHOP.]

SUICIDE is the death of a person caused by his own act, voluntary or involuntary.

A rescript of Hadrian expressed that those soldiers who, from impatience of pain, from the

from disease, from madness, from id of infancy or disgrace, had wounded selves or otherwise attempted to put end to their existence, should only punished with ignominia (*Dig.*, 49, tit. 8, s. 6, 'De Re Militari'); but the sept of a soldier at self-destruction on or grounds was a capital offence. Per- who, being under prosecution for ous offences, or being taken in the mission of a great crime, put an end his existence from fear of punishment, bited all their property to the Fiscus, he offence was such as would have followed by confiscation if they had convicted. (*Dig.*, 48, tit. 21, s. 3.) side was not uncommon among the mans in the later republican period; it became very common under the peters, as we see from the examples in time and in the younger Pliny, who ouses the case of Corellius Rufus (i. 12), Silius Italicus (iii. 7), Arria (i. 16), and the woman (vi. 24) who eaded in persuading her husband, was laboring under an incurable ease, to throw himself, tied to her, into ke. Except in the cases mentioned in two titles of the 'Digest' above cited, ide was not forbidden by the Roman e; nor was it discountenanced by public ion. (Rein, *Das Römische Criminal- it*, p. 803.)

Voluntary suicide, by the law of Eng- sh, is a crime; and every suicide is igned to be voluntary until the con- ry is made apparent. This crime is ed self-murder and feloniam de se (self- ay), neither of which terms is cal- culated to convey a correct notion of the character of this offence, or of the ists in which it is punished.

A *felio de se* (self-felon) is a person e, being of years of discretion and in e sound, destroys his own life, either ending to do so, or intending to do some e act of a character both unlawful e malicious; as if, in attempting to kill e, under circumstances which would e rendered such killing either mur- e or manslaughter, a gun bursts in the e's own hand, or he runs upon a e successfully in the hand of one person e he intended to kill. But in no e is self-felony considered to be com-

mitted if death do not ensue within a year and a day of the blow or injury; or, in other words, if a whole year intervene between the day on which the blow, &c., is given, and the day on which death takes place.

The legal effect of a self-felony is a forfeiture to the crown of all the personal property which the party had at the time when he committed the act by which the death was caused, including debts due to him; but though the crime is called felony, it was never attended with forfeiture of freehold, and never worked any corruption of blood. It appears, how- ever, that formerly the crown was entitled to the year, day, and waste of the freehold lands of a self-felon. The fact that a self-felony has been committed is ascertained by an inquest taken before the coroner or other officer who has authority to hold inquests, upon view of the dead body. [CORONER.]

When a self-felony is found by the in- quisition, the jury ought also to inquire and find whether the party had any, and, if any, what goods and chattels at the time when the felony was committed.

The crown takes the property of the self-felon subject to no liability in respect of his debts or engagements. Upon a memorial presented to the treasury by a creditor of the deceased, a warrant under the sign-manual is generally obtained, which authorises the ecclesiastical court to grant letters of administration to such creditor, who, upon such grant being made, acquires the ordinary rights, and becomes subject to the ordinary liabilities of a personal representative.

Involuntary suicide is death occasioned by the act of the party, either without an actual intention of destroying life or of committing any other wilful malicious act, or without the legal capacity of in- tending to do so. Neither self-felony nor any other crime can be committed by a child who has not attained years of dis- cretion; nor can it be committed by a person who, by disease or otherwise, has lost, or has been prevented from acquir- ing, the faculty of discerning right from wrong.

At common law, which in this respect follows the canon law, a person found by

inquest to be *felo de se* is considered as having died in mortal sin; and his remains were formerly interred in the public highway without the rites of Christian burial, and a stake was driven through the body; but by the 4 Geo. IV. c. 52, the coroner or other officer by whom the inquest is held is required to give directions for the private interment of the remains of any person against whom a finding of *felo de se* shall be had, without any stake being driven through the body, in the churchyard or other burial-ground of the parish in which the remains of such person might by the laws or customs of England be interred, if the verdict of *felo de se* had not been found; such interment to be made within twenty-four hours from the finding of the inquisition, and to take place within the hours of nine and twelve at night, without performance of any of the rites of Christian burial.

The Code Pénal of France contains no legislation on the subject of suicide. Of the modern codes of Germany, some contain no provisions, and others vary in their particular provisions. In the Bavarian and Saxon codes suicide is not mentioned. The Prussian code forbids all mutilation of the dead body of a self-murderer under ordinary circumstances; but declares that it shall be buried without any marks of respect otherwise suitable to the rank of the deceased; and it directs that if any sentence has been pronounced, it shall, as far as it is feasible, be executed, due regard being had to decency and propriety, on the dead body. The body of a criminal who commits self-murder to escape the execution of a sentence pronounced against him is to be buried at night by the common executioner, at the usual place of execution for criminals. The Austrian code simply provides that the body of a self-murderer shall be buried by the officers of justice, but not in a churchyard or other place of common interment.

SUIT is a legal term used in different senses. The word *secta*, which is the Latin form, is from "*sequor*," to follow; and hence the general meaning of the word may be deduced.

1. A suit in the sense of litigation, is a

proceeding by which any legal or equitable right is pursued, or sought to be enforced in a court of justice. Where the remedy is sought in a court of law, the term *Suit* is synonymous with *Action*; but when the proceeding is in a court of equity the term *Suit* is alone used. The term is also applied to proceedings in the ecclesiastical and admiralty courts.

2. *Suit* of court, in the sense of an obligation to follow, that is, to attend, and assist in constituting, a court, is either real or personal.

Suit-real, or rather *suit*-regal, is the obligation under which all the residents within a leet or town are bound, in respect of their allegiance as subjects, to attend the king's criminal court for the district, whether held before the king's officer and called the sheriff's town, or held before the grantees of leets or the officers of such grantees, and called *coroner's leet*. [*LEET*.]

Suit-personal is an obligation to attend the civil courts of the lord under whom the suitor holds lands or tenements; and this is either *suit*-service or *suit*-custom. If freehold lands, &c. be held of the king immediately, or, as it is feodally termed, in chief, *suit*-service is performed by attendance at the county court, the court held by the king's officer, the sheriff, unless the lands, &c. constituted an entire barony, in which case the *suit* demandable from the tenant was, his attendance as a lord of parliament. If freehold lands, &c. are held mediately only of the king, but immediately (or in chief) of an inferior lord, the *suit* demandable is attendance at the court *baron* of the lord; in either case, *suit*-service is expressly or impliedly reserved upon the grant of the tenure, as part of the service to be rendered for the estate. In *manors* [MANORS] where there are copyhold lands, customary estates, the custom of a manor imposes upon the copyholder an obligation to attend the lord's court; but as this obligation is not annexed by tenure to the land held by the copyholder, but is annexed by custom to his position as tenant, the *suit* is not *suit*-service but *suit*-custom. In the case of freeholders attending as suitors in the county court or the court-baron (see in the case of

tenant tenants per baroniam attend parliament), the suitors are the judges of court, both for law and for fact, the sheriff or the under-sheriff in the county court, and the lord or his steward a court-baron, are only presiding officers with no judicial authority. But in criminal jurisdiction of the town and the sheriff and the grantee of the lord or his steward, are the judges; and suitors act only a subordinate part.

The customary court, though its functions are confined to matters of a civil nature, yet, on account of the originalness of the copyhold tenure, the judicial power is wholly in the lord or his aid.

Besides suit of court, *seeca ad eum*, there are other species of personal action, which, like suit of court, are divided into suit-service and suit-custum, the most usual is suit of mill, and *molendinum*, which is where, by use or by custom, the freehold or copyhold tenant is bound to grind his corn at lord's mill.

UIT and SERVICE. [SUIT.]

SUMMARY CONVICTIONS. [LAW, CRIMINAL.]

SUPERANNUATIONS. [PENSION.]

SUPERADIGO. [SUIT.]

SUPERADIDAS, in law, the name of the writ used for the purpose of superseding proceedings in an action (Tidd's *Practice*; Black's *Practice*): in bankruptcy it is writ used for the purpose of superseding the fiat. It is obtained on application by petition to the court of bankruptcy, and is granted on the ground that fiat is invalid in point of law, has been duly prosecuted, &c. [BANKRUPTCY.] (Deacon's *Law of Bankruptcy*; 2's *Bankruptcy Law*.)

SUPERADIDAS, also in its more general sense, is used to express that which supercedes legal proceedings, although no writ *superadidas* may have been used for purpose. Thus if a writ of certiorari directed to an inferior court for the purpose of removing a record to a superior court, the writ of certiorari is said to be *superadidas* of the proceedings before inferior court.

SUPPLY. [PARLIAMENT.]

SUPREMACY is a term used to designate

supreme ecclesiastical authority; and is either papal or regal. Papal supremacy is the authority exercised until nearly the middle of the sixteenth century by the pope over the churches of England, Scotland, and Ireland, as branches and integral parts of the Western or Latin church, and which continues to be exercised to some degree over that portion of the inhabitants of those countries who are in communion with the Church of Rome. The extent of the legislative authority of the pope was never exactly defined.

The papal supremacy was abolished by the legislatures of the three kingdoms in the sixteenth century. In order to ensure acquiescence in that abolition, particularly on the part of persons holding offices in England and Ireland, an oath has been required to be taken, which is generally called the oath of supremacy, a designation calculated to mislead, it being in fact an oath of non-supremacy; since, though in its second branch it negatives the supremacy of the pope, it is silent as to any supremacy in the king. This oath is therefore taken without scruple by persons who are not Roman Catholics, whether members of the Anglican church or not. The form of the oath was established in England by 1 Wm. & Mary, c. 2; it is as follows:—"I, A. B., do swear that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign prince, person, prelate, state, or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. So help me God." Under this and many former statutes, all subjects were bound to take the oath of supremacy when tendered; but by the 31 Geo. III. c. 32, s. 18, no person, since the 24th June, 1791, is liable to be summoned to take the oath of supremacy, or prosecuted for not obeying excommunicans; and Roman Catholics, upon taking the oath introduced by that Act.

s. 1, in which the *civil and temporal* authority of the pope are abjured, may hold office without taking the oath of supremacy. As to other cases concerning the oath of supremacy see *LAW, CRIMINAL*, p. 218.

Henry VIII. was acknowledged as supreme head of the church by the clergy in 1528. This supremacy was confirmed by parliament in 1534, when, by the statute of 26 Hen. VIII. c. 1, it was enacted "that the king our sovereign lord, his heirs, and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the Church of England, and shall have and enjoy, annexed to the imperial crown of this realm, as well the style and title thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of supreme head of the same church belonging and appertaining; and shall have power from time to time to visit, repress, redress, reform, order, correct, restrain, and amend all such errors, heresies, abuses, offences, contempts, and enormities, whatsoever they be, which, by any manner of spiritual authority or jurisdiction, may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm; any usage, custom, foreign laws, foreign authority, prescription, or any other thing to the contrary notwithstanding."

SURETY. A surety is one who undertakes to be answerable for the acts or omissions of another, who is called his principal. Such undertaking must be in writing, and it may be either by bond or by simple writing. A contract is not binding unless made upon some sufficient consideration; but in the case of a bond this consideration is inferred from the circumstances of deliberation incident to its execution as a deed. When the undertaking is not by bond, it is necessary that the consideration should appear upon the face of the written instrument, or be necessarily implied from the terms of it, and that the instrument should be signed

by the party who becomes the surety. The instrument by which the surety becomes bound, when it has reference to civil matters, is generally called a *contract*, and ordinarily consists of a promise by the surety to become answerable for the payment of goods furnished to the principal, or for his integrity, skill, and other like matters. In such cases the consideration expressed would be the furnishing of the goods to the principal, or his employment by the party guaranteed. In the case of a *contract* the same rule of construction prevails as in the case of all written contracts,—that they shall be under the sense most favourable to the making them which the words reasonably bear.

With respect to the right of a surety against the principal, Mr. Boller has distinctly laid down that "wherever a person gives a security way of indemnity for another, as the money, the law raises an assumption that is, implies a promise on the part of the principal to repay to the surety the money that he has expended on his behalf, and this money may be recovered in an action against the principal for the money paid to his use. But in no case is the surety entitled to more than indemnity from his principal. The law of chancery will interfere to give the surety relief out of any funds of the principal which he cannot reach at law."

Where more persons than one are sureties for the same principal, they are called *co-sureties*. If one of them has paid the whole of the debt due to the principal, he may recover in an action of assumpsit from his co-sureties the proportion for which they were respectively bound. A court of equity will also regulate the proportions partly due to each. And in case any of them is unable to pay from insolvency, the court will compel the others to contribute proportionally the amount for which they were liable. The law is the same as to co-sureties, whether the debt has been created by the same instrument in writing, or each one by a distinct contract.

(*Fell. On Guarantees; Mayhew v. Nicholl, 2 Swinston, 1851.*)

SURETY OF THE PEACE is the acknowledgment of a recognisance or bond to the king, taken by a competent judge of record for keeping the peace. [*Riscoe v. France.*] Such recognisance may be obtained by any party from another on application to a magistrate, and stating on oath that he has just cause to fear that such other "will burn his house, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him such mischief." The fear must be of a present or future danger. Upon the neglect or refusal of the party so summoned to enter into the recognisance demanded, he may be committed to prison by the magistrate for a specified period, unless he sooner complies. Sureties also may be similarly required for the good behaviour of parties who have been guilty of conduct tending to a breach of the peace, abusing those in the administration of justice, &c.

(*Burn's Justice*, tit. 'Surety of the Peace'.)

SURGEONS, COLLEGE OF. The ancient College of Surgeons of England, and its origin in the Company of Barber-surgeons, which was incorporated by royal charter in the first year of Edward IV. By this charter of Edward IV., the barbers practising surgery in London, who had before associated themselves as a company, were legally incorporated as the Company of the Barbers in London. Their authority extended to the right of examining all instruments and remedies employed, and of bringing actions against whoever practised illegally and ignorantly; and none were allowed to practise who had not been previously admitted and judged competent by the masters of the company.

This charter was several times confirmed by succeeding kings, but in spite of it many persons practised surgery independently of the company, and at length associated themselves as members of a separate body, and called themselves the Surgeons of London. In the 3rd year of Henry VIII. it was enacted "that no person within the city of London, or within seven miles of the same, should

take upon him to exercise or occupy as a physician or surgeon, except he be first examined, approved, and admitted by the bishop of London or by the dean of St. Paul's for the time being, calling to him four doctors of physic, and for surgery other expert persons in that faculty." All who under this act obtained licence to practise were of course equally qualified, whether members of the company of barbers or not; and in the 32nd year of Henry VIII. the members of the latter company, and those who had incorporated themselves as the company of surgeons, were united in one company, "by the name of masters or governors of the mystery and commonalty of barbers and surgeons of London."

In the 18th year of George II. an act was passed by which the union of the barbers and surgeons was dissolved, and the surgeons were constituted a separate company; and in the 40th year of George III. a charter was granted by which it was confirmed in all the privileges which had been conferred upon it by the act of George II. By this charter the title of the company was altered from that of the masters, governors, and commonalty of the Art and Science of Surgeons to that of the Royal College of Surgeons in London. Under this charter it was governed by a council or court of assistants, consisting of twenty-one members, of whom ten composed the court of examiners. Of these ten one was annually elected president, or principal master, and two were annually chosen vice-presidents or governors. By the bye-laws which the council were empowered by the charter to make, the members of the council were to be chosen for life from those members of the College whose practice was confined to surgery, and were to be elected by ballot at a meeting of the council. The examiners were generally chosen in order of seniority from the members of the council; the presidents and vice-presidents were chosen in rotation from the court of examiners, the president for the current year having been the senior vice-president during the past year.

A new charter was granted to the College of Surgeons in the 7th year of
3 D 2

Victoria, by which it is declared, that the name of the college shall henceforth be The Royal College of Surgeons of England; and that a portion of the members of the said college shall be fellows thereof, by the name of The Fellows of the Royal College of Surgeons of England. The charter declares that the present president and two vice-presidents and all other the present members of the council of the said college, and also such other persons, not being less than 250 nor more than 800, and being members of the said college, as the council of the college, at any time before the expiration of three calendar months from the date of the charter, shall elect and declare to be fellows in manner by the charter directed; together with any such other persons as the council of the said college, after the expiration of the said three calendar months and within one year from the date of the charter, shall appoint in manner by the charter authorized, shall be fellows of the said college. But no person, except as hereinbefore named, is to become a fellow, unless he shall have attained the age of twenty-five years, and complied with such rules as the council of the college shall think fit, and by a bye-law or bye-laws direct; nor unless he shall have passed a special examination by the examiners of the said college. Every person admitted as a fellow, as last mentioned, is to become a member of the College by such admission, if he is not already a member. Henceforth, no member of the College, who is not a fellow, is to be eligible as a member of the council. There are also (10) some other restrictions as to eligibility. The present members of the council are to continue life members as heretofore; and the number of members of council is to be increased from twenty-one to twenty-four, and all future members are to be elective, and to be elected periodically, in the manner prescribed by the charter (12) when the number of elective members of the council shall be completed and made up to twenty-four. Three members shall go out annually, but they may be re-elected immediately. The members of council are to be elected by the fellows, including the members of the council

as such, in the manner prescribed by the charter (15); and the election is to be by ballot (17). There are several provisions as to the eligibility of fellows for which we refer to the charter. There are to be ten examiners of the college, and the examiners are to continue for life, or until they are elected to the council, either from the present members of the council, or from the other fellows of the college, or from both of the said classes. The charter contains regulations, and confirms the power of the council and the college, except as they are altered by the charter, to make bye-laws or bye-laws hereafter to be made by the council, or by any force until the crown shall signify its approval thereof, to be made under the hand of one of the principal secretaries of state, or other in the charter stated (22). "The Laws and Ordinances of the Royal College of Surgeons of England" contain regulations as to the candidates for the ship (sect. 1), for the examination of fellows for the fellowship (2), and of fellows (3), election of members of council (5). By section 1, it is provided that every candidate for the fellowship, among other certificates, shall present a certificate, satisfactory to the examiners, that he has attained a competent knowledge of the Greek, Latin, and French languages, and of the elements of mathematics. The subjects of examination for the fellowship are Anatomy, Physiology on the first day, and Surgery and Therapeutics on the second day. The examination is by written answers to questions or propositions; but any candidate may be required by the examiners, on any such day, to dissect with the questions or propositions the anatomical examination the candidate must also perform dissections and operations on the dead body in the presence of the examiners.

The members of the College are admitted by diploma after examination before the court of examiners, and the diploma confers upon them the right

surgery in any part of the unions.

fell of the College have at sea required certain qualifications, education, &c., from examination. The regulations are dated October, 1841.

inations of members are con-voce, or, if the candidate desires g. The questions are almost anatomical and surgical; and sion of each candidate occurs an hour and a half, during he is usually questioned by examiners in succession.

g to the financial statement t), the receipts of the College ous year were as follows:—

aminers; fees			
nas, at 20 guineas, exclusive of	£	s.	d.
	14,093	11	0
		12	0
sale of lists, &c.	160	6	6
on investment			
government	1,499	0	4
&c.			
	£15,765	7	10

bursements were as follows:—

partment, in-council, court			
ners, auditors,			
stamps, sala-	7,402	19	1
partment, in-catalogues, spo-			
pirit, salaries,	3,653	0	10
dps, &c.			
partment, in-the purchas-			
ing of books,	1,120	12	7
&c.			
ous expenses,			
it, &c.	698	18	1
ed alterations	253	10	6
oration, lec-			
tksonian prize,	264	4	0
	£13,393	5	1

sum of the College consists of

the collection made by John Hunter, which was given in trust by government, who purchased it for 15,000*l.*, and of numerous additions made to it by donations of members and others, and by purchase. The parts of it which illustrate physiology, paleontology, and morbid anatomy are probably the most valuable collections of the kind in Europe.

Lectures on anatomy, for which 510*l.* were left to the company of barber surgeons by Edward Arris, and 16*l.* per annum by John Gale, are delivered annually by one of the members of the council or some other member selected by them. Twenty-four museum lectures are also, in compliance with the deed of trust, annually delivered by the Hunterian professor, the subjects of which must be illustrated by preparations from the Hunterian collection, and from the other contents of the museum. An oration in commemoration of John Hunter, or of others who have been distinguished in medical science, is delivered annually on the 14th of February, the anniversary of Hunter's birth.

Abstracts of the several acts and charters relating to the College of Surgeons may be found in Willcock's 'On the Laws relating to the Medical Profession,' London, 1830, 8vo., and in Paris and Ponblanque's 'Medical Jurisprudence,' vol. iii. The bye-laws, the list of members, the catalogues of the museum and library, &c., are published by the college. The dissection of human bodies is now regulated by 2 & 3 Wm. IV. c. 75 [ANATOMY ACT].

SURRENDER. "*Sursum relditis* properly is a yielding up of an estate for life or years to him that hath an immediate estate in reversion or remainder, wherein the estate for life or years may drown by mutual agreement between them." (Co. Litt. 537 b.) A surrender and a release both have the effect of uniting the particular estates with that in reversion or remainder; but they differ in this, that whereas a release generally operates by the greater estate descending on the less, a surrender is the falling of the less estate into the greater. (As to the difference between **SURRENDER** and **RESIGINATION**, see **RESIGINATION**.)

Coke mentions three kinds of surrender: 1. A surrender at common law, which is the surrender properly so called; 2. A surrender by custom of copyhold lands or customary estates; and, 3. A surrender improperly taken, as of a deed, a patent, of a rent newly created, and of a fee-simple to the king. (Co. Litt. 338 a.)

As to surrender of copyholds, see **COPYHOLD**.

A surrender may be made of letters-patent and offices to the king, to the intent that he may make a fresh grant of the same right; and a grant of the second patent for years to the same person, for the same thing, causes a surrender in law of the first. (10 Rep., 66.)

SURROGATE is, according to Cowell's 'Interpreter,' "one that is substituted or appointed in the room of another, most commonly of a bishop or a bishop's chancellor."

The qualifications required in persons appointed as surrogates are defined and enforced by the canons of 1603. The person who undertakes the office without being qualified is subject to certain penalties. (Gibb., *Cod.*, tit. xliii., c. 3.)

The principal duty of ecclesiastical surrogates consists in granting probates to wills, letters of administration to the effects of intestates, and marriage licences. The proper performance of these duties is guarded by particular enactments. (92nd of the Canons of 1603 and 93rd Canon; Gibb., *Cod.*, tit. xxiv., c. 4.)

Surrogates are also persons appointed to execute the offices of judges in the courts of Vice Admiralty in the Colonies, in the place of the regular judges of those courts. The acts of such surrogates have, by the 56 Geo. III. c. 82, the same effect and character as the acts of the regular judges.

SURVIVOR, SURVIVORSHIP.

[ESTATE, p. 858.]

SUZERAIN. [FEUDAL SYSTEM, p. 22.]

SWEARING, a profane use of the name of the Deity. By the 109th Canon, churchwardens are to present those who offend their brethren by swearing, and notorious offenders are not to be admitted to communion until they are reformed.

Profane cursing and swearing were made an offence punishable by law Jas. I. c. 21 (continued by 3 Chas. I. 16 Chas. I. c. 4; and 6 and 7 Wm. c. 11). The 19 Geo. II. c. 21, that if any person shall profanely or swear, and be convicted thereof in session, or on the oath of one witness before any magistrate, he shall forfeit day-labourer, common soldier, or seaman, 1s.; if any other person the degree of gentleman, 2s.; if above the degree of a gentleman, 5s. every second conviction double, and every third and subsequent conviction treble. The penalties are to go to the poor of the parish. Parties who pay the penalties and costs may be sentenced and kept to hard labour for the penalties, and six other days for the costs. Magistrates and constables are liable to penalties if they wilfully do their duty under the act. No person can be prosecuted except within ten days after he has committed the offence. By 22 Geo. II. c. 33, persons liable to the navy who are guilty of oaths or curses are liable to punishment by court-martial.

(Com., Dig., 'Justices of Peace; Burn's Justice, 'Swearing.')

T

TACK is the technical term applied to land for a lease, whether of lands or offices; the rent is called the tack, and the tenant the tackman. The English system of leases having attracted some attention, and being of great importance, a separate sheet more prominent peculiarities seem requisite. The Scottish lease, in long its duration, is purely a contract does not partake—at least in its origin—between landlord and tenant—of peculiarities of the feudal system. Sometimes it is possible to trace something like an inferior system of vassalage the nature of the agriculturist's tenure. He held not as party to a contract by a unilateral conveyance from the landlord, called *assadation*. In Scotland, however, there was no permanent

of the legitimate system of sub- and thus all descriptions of per-
estates could be constituted in the
the pure adaptation of the feudal

There was no temptation to con-
tract for the limited occupa-
use of the land into a means of
ing a semi-proprietary right in it
plying with a lessee the place of a
all; and the system of leases, as one
letting and hiring, took its prin-
om the Roman contract of *locatio*
o. The right of the lessee or tack-
so purely personal that it was in-
against a party acquiring the
purchase from the lessor; and so
1449 a statute was passed, pre-
the rights of "the pair people
ouris the ground" against new

Lenschoold rights, however, in
a of succession, and in the form
hment, employable by creditors,
usage came into the position of
heritable property. In the times
agricultural improvement, when
ere frequently taken on leases of
en years at a low rent, a virtual
was created, the succession to
eight for the time be more impor-
in that of the ownership of the
Unless there be any specification
ontrary in the lease, such succes-
low the rules applicable to landed
y. It has been matter of much
that the system by which feudal
n land may be subjected to real
n, has not been extended to this spe-
property, so as to enable valuable
be burdened with a security for
d money, or a guarantee fund for
ons for children. The system of
g and recording public feudal titles
g available for this species of pro-
fl attempts to accomplish this ob-
the tenant assigning the lease and
g possession as the assignee's sub-
have been ineffectual against the
creditors. It has been frequently
d to pass an act creating a system
tration of leases, and of burdens
g them.

unnecessary to state very mi-
the title which a person must
enable him to grant a lease,
ties who may hold leases, or the

nature of the titles which constitute an
ordinary lease, as these bear a generic
resemblance to the corresponding features
of English law. Long leases, however,
being the prominent feature of the Scot-
tish system, those cases in which there is
a restriction on granting them may be
noticed. A person who has a life-rent
interest is, in the general case, not en-
titled to grant a lease to last beyond his
own life. Persons having the absolute ad-
ministration of property, as trustees, cor-
porations, &c., are entitled and bound to
grant leases for such a period as is deemed
necessary to good husbandry; and this
period has, by usage, in the ordinary
case, been fixed at nineteen years. There
have been many questions as to the ex-
tent to which persons holding under en-
tails may grant leases, because in many
instances attempts have been made in
this form to alienate a considerable estate
in the property, which have been chal-
lenged by successors. In the celebrated
Queensberry case, leases granted for
ninety-seven years, on a grassum (that
is, a sum of money paid by the tenant
on entering, like a fine in England), were
found to be struck at by the entail as
an attempt to alienate part of the pro-
perty (2 Dow, 90). In later cases, leases
of forty and thirty-one years have been
found ineffectual. A lease of twenty-one
years is the longest that has been sanc-
tioned by the courts where an heir of
entail has shown that he has an interest
to impugn the contract.

Writing is necessary to constitute a
lease, although possession during the part
that may remain over of a year begun, may
be held as a right from sufferance and ac-
quiescence in its commencement. The
proper form of the written agricultural
lease has been an object of much atten-
tion by conveyancers, and there is a con-
siderable degree of uniformity in the pra-
ctice throughout the country. There are
usually nineteen clauses, as follow:—1.
The Description of Parties. 2. *The De-*
stination, in which the extent to which as-
signing or subletting is permitted or pro-
hibited is set forth, and provision is made
for the arrangements in case of the
tenant's decease. 3. *Clause of Posses-*
sion, describing the subject let. 4.

Duration. 5. *Reservation*, if there be any rights such as that to minerals or game reserved by the landlord. 6. *Landlord's Meliorations*, containing such obligations to improve the subject as the landlord undertakes. 7. *Warrantice* or guarantee of the title given to the tenant. 8. *Rent-clause.* 9. *Tenant's Meliorations*, setting forth such improvements as the tenant undertakes. 10. *Preservation*, containing the tenant's obligation to keep the building, fences, &c., in repair. 11. *Insurance*, in which the tenant becomes bound to insure the buildings, crops, &c., against fire. 12. *Thirlage*. This clause, a remnant of feudal usages, is now comparatively rare—it binds the tenant to grind his corn at the mill of the over-lord. 13. *Management.* 14. *Bankruptcy*, providing in general for the landlord's resumption of the lease if the tenant become bankrupt. 15. *Removal*, by which the tenant engages to evacuate the premises at the prescribed term. 16. *Reference*, providing for arbitration of disputes. 17. *Mutual Performance*, indicating penalties to be paid by the party failing. 18. *Registration* for execution [REGISTRATION]. 19. *Testing clause*, containing the formalities of the execution of the contract. Of these, the clause of management is the most important. It is now much doubted how far it is good policy to bind the tenant to the observance of a particular course of agriculture. In the highly improved districts, where very scientific farming is expected, the tenant is generally more capable than the landlord of estimating the value of improved systems. Agricultural chemistry, and other means of increasing the produce of the soil, are at present the object of much attention among farmers, and where tenants cannot alter a fixed routine without the risk of a law-suit, an embargo is laid on the practical application of improvements. The landlord's chief interest in any routine being followed, is simply the preservation of the land from deterioration towards the conclusion of the lease. On the subject of the usual provisions for management, Mr. Hunter says, "In those districts where agriculture is best understood, the following are the ordinary rules of management during the

currency of the lease:—1. While one crop ripening their seeds shall never be taken from the same land in immediate succession. 2. A certain proportion shall be under turnips or plain fallow every year, and be sown to grass with the corn crop after turnips or fallow. 3. No farm-yard dung or putrescent manure made from the produce of the farm, or straw nor hay made from the same herbage shall ever be carried off the farm. It is sometimes added, that no turnips or rape or hay of any kind shall ever be removed or sold. And upon rich soils, it is sometimes required that not less than half of the turnips shall be eaten by sheep on the ground where they grow. 4. If the soil is not such as to admit of being ploughed and cropped every year, it is stipulated that a certain part or proportion shall be always in grass, and that land laid down to grass shall be, before being broken up again, two or more years in pastures. 5. During the first five or six years of a lease, the conditions are sometimes more specific, obliging the tenant to have so much more in fallow or turnips every year, and so much more in grass, and also to leave the farm in a particular shape, so as to admit of the incoming tenant pursuing a correct rotation of cropping from his entry. Or 6. What is approved of by some agriculturists, it may be agreed that the lessee shall cultivate the lands according to the rules of husbandry, but with the addition of specific regulations applicable to the four or five last years of the lease. 7. Adherence to the course prescribed may be enforced by conditioning for payment of additional rent in the event of contravention, besides damages, and with a power to prevent further contravention, for which purpose power to make a summary judicial application is occasionally taken. (23.) Liberty may be given to the lessee to deviate from the prescribed course upon payment of an additional rent specified, which may be declared to be partial and not penal, and not liable to judicial modification. 9. In some districts, though seldom in the most improved, there is occasionally a stipulation that the lessee shall himself reside upon and

age the farm."—4. 369-370. (*A Treatise on the Law of Landlord and Tenant, an Appendix, containing Forms of Assizes*, by Robert Hunter, Esq., Advocate, 8. 8vo., 1845.)

II. ESTATE. [ESTATE.]

TAILZIE, in the law of Scotland, is a technical term corresponding with the English word Entail, which now fully supersedes it in colloquial use, in Scotland. The early history of the law in Scotland in some respects resembles that of England but in later times they diverged from each other. Scotland there was no early effort, as the statute of Westminster the second (13 Edw. I.) favouring deeds creating a fixed series of heirs, nor there appear to have been on the part of judges that inclination to permit entails to be defeated by fictions which was shown in England. Devices, however, of a very similar character to those of the English statute were adopted to defeat attempts by holders under entail to use their lands as if they were sole proprietors. The first and simplest restriction laid on the destined holder of an entail was in the form of a prohibition, against contracting debts which might occasion the attachment of the estate by creditors, selling the property, altering the order of succession, and the like. A provision of this character, called the "Prohibitive entail," was, however, quite insufficient to accomplish the end; because if a creditor really attached the estate for a person had bona fide purchased it was no ground for wresting the title from his hands, that the proprietor was under a prohibition against permitting such occurrences. A second provision was added, called an Irritant clause, by which any right acquired contrary to the provisions of the entail was declared to be null. Still this did not effectually deter the holder under the entail from making efforts to break it, and did not give the next in succession a sufficient ground to interfere. A third provision was added called the "Resolutive clause," by which the right of the person who contracted in violation of the prohibition "resolves" or becomes forfeited. It was provided by sta-

tute (1685, c. 22) that all entails should be effective which contain Irritant and Resolutive clauses, are duly recorded by warrant of the court of session in Registers of Entails, and are followed by recorded saisins containing the Prohibitory, Irritant, and Resolutive clauses. No attempts were made to counteract the Entail system by fictions of law, which are not in accordance with the genius of the law of Scotland, and it became a permanent feature in the institutions of the country. A sort of judicial war has, however, been carried on against Entails individually, which has been productive of a vast amount of litigation and strife, has occupied much judicial time, and has tended to place the titles of property in a precarious and doubtful position. An Entail is excluded from the favourable interpretation of the law. The interpretation of its clauses is to be what is termed *strictissimi juris*. The intention of the framer is never to be contemplated: every blunder is to be given effect to, and nothing is to be explained by reference to the context, if its own meaning as a sentence is doubtful. Thus, in a late case, those who held under an Entail were prohibited among other things from contracting debt to the effect of the estate being attached. The Irritant clause proceeded to say "if the heirs shall contravene the premises, by breaking the Tailzie, contracting of debts," &c. (enumerating other contraventions), it was provided that "then and in any of these cases, the said venditions, alienations, dispositions, infeftments, alterations, infringements, bonds, tacks, obligations, made to the contrair" should be null. It was found that proceedings by creditors to attach the estate for debt were good, because they were not by name enumerated among the things that should be null, though they were prohibited, and mentioned among the things which, if coming to pass should cause a nullity. (*Duffus's Trustees v. Dunbar*, 28th January, 1842, 4 D. H. M. 523.) Some statutory enlargements have been made on the powers of persons holding under entail to provide for widows and younger children: but the system is still productive of great domestic inequality, and it is to be hoped

that in no long time it will be swept away as an impediment to the improvement of the country, and an injustice to the mercantile classes.

TARIFF, a table of duties payable on goods imported into or exported from a country. The principle of a tariff depends upon the commercial policy of the state by which it is framed, and the details are constantly fluctuating with the change of interests and the wants of the community, or in pursuance of commercial treaties with other states. The British tariff underwent six important alterations from 1772 to 1842; namely, in 1787, in 1809, 1819, 1825, 1833, and 1842. The act embodying the tariff of 1833 is the 3 & 4 Wm. IV. c. 56. Its character has been described in the Report of a Committee of the House of Commons in 1840, on the Import Duties, as presenting "neither congruity nor unity of purpose: no general principles seem to have been applied. The tariff often aims at incompatible ends; the duties are sometimes meant to be both productive of revenue and for protective objects, which are frequently inconsistent with each other. Hence they sometimes operate to the complete exclusion of foreign produce, and in so far no revenue can of course be received; and sometimes, when the duty is inordinately high, the amount of revenue becomes in consequence trifling. An attempt is made to protect a great variety of particular interests at the expense of the revenue and of the commercial intercourse with other countries." The schedules to the act 3 & 4 Wm. IV. c. 56, contain a list of 1150 articles, to each of which a specific duty is affixed. The unenumerated articles are admitted at an *ad valorem* duty of 5 and of 20 per cent., the rate having previously been 20 and 50 per cent. In 1838-9, seventeen articles produced 94½ per cent. of the total customs' duties, and the remainder only 5½ per cent., including twenty-nine, which produced 3½ per cent. The following table of the tariff of 1833, showing the duties received in 1838-9, is an analysis of one prepared by the Inspector-general of imports for the parliamentary committee to which allusion has been made:—

	No. of Articles.	£
1. Articles producing on an average less than 24 <i>l</i> .	349	8,060
2. Do. less than 24 <i>l</i> .	132	31,028
3. Do. less than 71 <i>l</i> .	45	32,680
4. Do. less than 2,290 <i>l</i> .	107	244,330
5. Do. less than 22,180 <i>l</i> .	63	1,397,334
6. Do. less than 183,864 <i>l</i> .	10	1,838,639
7. Do. less than 2,063,885	9	18,373,071
8. Articles on which no duty has been received	147	5,300

862 22,123,065

Under the head CUSTOMS-DUTIES, mention is made of the tariff of 1842, of the repeal of the duty on wool in 1844, and of the duty on cotton in 1845. In the same year, by an act (8 Vict. c. 7) "to repeal the Duties of Customs due upon the Exportation of certain Goods from the United Kingdom," the duties on the exportation of coals, culm, &c. are wholly repealed.

Caps. 84 to 94 of the 8 & 9 Vict. are all acts relating to Customs, Trade, and Navigation, and they all came into operation on the 4th of August, 1845. Cap. 84 is "An Act to repeal the several Laws relating to Customs," by which 26 acts were repealed. Cap. 85 is "An Act for the Management of Customs," and regulates the appointment and duties of officers, the taking of land for warehouses, &c. Cap. 86 is "An Act for the general Regulation of Customs," and relates to landing, warehousing, and custom-house entries. Cap. 87 is "An Act for the Prevention of Smuggling," and specifies the acts which constitute smuggling, and the penalties. (This Act must be added to those mentioned in SMUGGLING.) Cap. 88 is "An Act for the Encouragement of British Shipping and Navigation," giving, with exceptions which are specified, certain privileges to British ships over foreign ships. Cap. 89 is "An Act for the Registering of British Vessels." Cap. 90 is "An Act for granting Duties of Customs," and imposes duties upon certain articles. (These duties are referred to in the preamble of the Tariff Act (9 & 10 Vict. c. 23) hereafter mentioned.) Cap. 91 is "An Act for the Warehousing of Goods." Cap.

"An Act to grant certain Bounties Allowances of Customs," which is not however to refined sugar. Cap. 34 is "An Act to regulate the Trade of the Colonies abroad." Cap. 34 is "An Act for the Regulation of the Trade of the Colonies." Cap. 34 is "An Act for the Regulation of the Trade of the Colonies."

On the 26th of June, 1846, the royal warrant was given to Sir Robert Peel's tariff, which carries out still further principles of free trade by a total repeal of all important duties, and by a great reduction of numerous others. It is entitled "An Act to alter certain Duties of Customs" (9 & 10 Vict. c. 25.)

On the same day (June 26, 1846) the warrant was given to the act for regulating the duties on the importation of foreign corn. It is entitled "An Act to alter the laws relating to the Importation of Corn" (9 & 10 Vict. c. 22.) By this act certain reduced "sliding-scale" duties are substituted for those of 1842, they are to continue till Feb. 1, 1849. All duties on the importation and exportation for home consumption of corn, wheat, meal, and flour in the United Kingdom and in the Isle of Man are repealed, with the exception of 1s. per quarter on wheat, barley, bear or bigg, oats, rye, and beans, merely for the purpose of registration of the quantities imported. Duties on all wheat-meal and flour, rye-meal, oat-meal, rye-meal and flour, meal, and bean-meal are to be 4½d. every cwt.

The sliding-scale duties of 1842 (5 & 6 Vict. c. 14) are given under Customs, p. 66A. The duties of 9 & 10 Vict. c. 22 are as follows:—

	s. d.
Oat, per quarter, under 48s.	10 0
48s. and under 49s.	9 0
49s. and under 50s.	8 0
50s. and under 51s.	7 0
51s. and under 52s.	6 0
52s. and under 53s.	5 0
53s. and upwards	4 0
Rye, bear, or bigg, per quarter, under 26s.	5 0
26s. and under 27s.	4 6
27s. and under 28s.	4 0
28s. and under 29s.	3 6
29s. and under 30s.	3 0
30s. and under 31s.	2 6
31s. and upwards	2 0

	s. d.
Oats, per quarter, under 18s.	4 0
18s. and under 19s.	3 6
19s. and under 20s.	3 0
20s. and under 21s.	2 6
21s. and under 22s.	2 0
22s. and upwards	1 6

On rye, peas, and beans the duty is equal in amount to the duty payable on barley. But there appears to be some blunder here, for the duty on rye, peas, and beans being regulated by the duty on barley, is regulated by the price of barley, and not by the price of rye, peas, and beans. The consequence of this is that when barley is under 26s. the quarter, and is paying 5s. duty, rye, peas, and beans will pay 5s. duty, whatever their respective prices may be; and they will only pay the lowest duty of 2s. per quarter when barley is 31s. and upwards the quarter. (See "Economist" Newspaper, June 4th and 11th, 1846.) The duties payable on all flour and meal, as above enumerated, until the 1st February, 1849, are enumerated in the schedule to the act. The average price both weekly and aggregate of all British corn is to continue to be made up according to 5 & 6 Vict. c. 14.

Of the exemptions from duty and reductions of duty made by the last tariff act (9 & 10 Vict. c. 23), it will suffice to mention a few of the most important.

No duties are chargeable on the following living animals:—oxen and bulls, cows, calves, horses, mares, geldings, colts, foals, mules, asses, sheep, lambs, swine and hogs, sucking-pigs, goats, kids.

No duties are chargeable on bacon, beef, fresh or slightly salted, beef salted, not being corned beef, meat fresh or salted, not otherwise described, pork fresh or salted (not hams), potatoes, all vegetables not otherwise enumerated or described, hay, hides, and some other articles slightly wrought, and a few wholly manufactured.

Of the reduced duties the following are the most important:—ale and beer of all sorts, 1l. the barrel; arrow-root, 2s. 6d. the cwt., and if from a British possession 6d. the cwt.; pearled barley, 1s. the cwt., and if from a British possession 6d. the cwt.; buckwheat, 1s. the quarter; butter 10s. the cwt., and if from a British pos-

session 2s. 6d. the cwt.; tallow-candles, 5s., the cwt.; cheese, 5s. the cwt., and if from a British possession 2s. the cwt.; cured fish, 1s. the cwt.; hams of all kinds, 7s. the cwt., and if from a British possession 1s. 6d. the cwt.; men's hats, 2s. each; men's boots, 14s. the dozen pairs; men's shoes, 7s. the dozen pairs; women's boots and shoes, from 4s. 6d. to 7s. 6d. the dozen pairs, according to kinds, as described; maize or Indian corn, 1s. the quarter; potato flour, 1s. the cwt.; rice, 1s. the cwt., and if from a British possession 6d. the cwt.; sago, 1s. the cwt.; tallow, 1s. 6d. the cwt.

The duties on manufactured goods of brass, bronze, china-ware, copper, iron and steel, lead, pewter, tin, woollen, and cotton, are 10l. for every 100l. value. On silk manufactures the duties are about one-third higher, or 5s., 6s., and 9s. the lb., according to kinds, as described, or 15l. on every 100l. value.

The duty on foreign spirits of proof strength is 15s. the gallon.

The duty on foreign solid timber, from and after April 5, 1847, is 1l. the load of 50 cubic feet; from and after April 5, 1848, the duty is 15s. the load. On deals or boards, the duty, from and after April 5, 1847, is 1l. 6s. the load; from and after April 5, 1848, it is 1l. the load. The Tariff of 1842 is not altered with respect to timber imported from a British possession, which is still 1s. the load of solid timber, and 2s. the load of sawn timber.

The duties on coffee and tea are not altered by the tariff. The act 8 Vict. c. 5, which fixed the sugar-duties for one year, terminated July 5, 1846, and has been renewed for a month; the subject of those duties is now under the consideration of parliament, and they will probably be altered.

TAX, TAXATION. A tax is a portion of the produce of a country or its value, applied to public purposes by the government. Taxation is the general charging and levying of particular taxes upon the community.

In a free state it is assumed that all taxation is necessary for the public good; and it is justified by necessity alone.

The amount of expenditure will, in a great measure, be determined by the

magnitude of a state and by the number and importance of its political relations; yet the prudence with which its affairs are administered will affect the demands of the government upon the people nearly as much as its necessities. The expenses of a private person must be regulated by his income; but in a state, the expenditure that is needed is the measure of the public income that must be obtained to meet it. A civilized community requires not only protection from foreign enemies and internal security, but it needs various institutions which are conducive to its welfare. It is the business of a government to provide for these objects in the best manner and at the least expense consistent with their efficiency. Every tax should be viewed as the purchase-money paid for equivalent advantages given in return. This principle assumes the necessity of moderation in levying taxes, and will scarcely be denied by any one when stated in that form; yet it is not uncommon to hear it argued that so long as taxes are *spent in the country*, the amount is not of consequence, as the money is returned through various channels to the people from whom it was derived. The principle we have just laid down exposes the fallacy of this doctrine, by reducing it to a simple question between debtor and creditor. For example, by paying a million of money every year, the people obtain the services of an army. This we will suppose to be an equivalent, and we will further assume that the food and clothing of the force are purchased, and that the entire pay of the men is spent, within the country. The whole of the money will thus be returned; but how? Not as a free gift, not as the repayment of a loan, but in the purchase of articles equal in value to the whole sum. The only benefit obtained by this return of the million is clearly nothing more than the ordinary profits of trade; for the community has already provided the money, and then out of its own capital and industry it produces what is equal to it in value, and this it *sells* to the state, receiving as payment the very sum it had itself contributed as a tax.

No branch of legislation is perhaps so important as the wise application of just principles in the matter of taxation. The

wealth, happiness, and even the morals of the people are dependent upon the financial policy of their government.

Adam Smith lays down four general maxims, which are as follow:—

I. "The subjects of every state ought to contribute towards the support of the government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state."

II. "The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person."

III. "Every tax ought to be levied at the time or in the manner most likely to be convenient for the contributor to pay it."

IV. "Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state."

In discussing the merits of particular taxes we shall have to consider with some minuteness the application of Adam Smith's first maxim. Its justice requires no enforcement or illustration, although the object is most difficult of attainment. The second maxim is of great importance, and the necessity of adhering to it must be universally acknowledged. Uncertainty gives rise to frauds and extortion on the part of the tax-gatherer, and to ill-will and suspicion on that of the contributor, while it offers a most injurious impediment to all the operations of trade. Notwithstanding the many evils of uncertainty, it is by no means an uncommon fault in modern systems of taxation.

Under the constitutional governments of Europe, the people do not indeed suffer from violent exactions, as in the Turkish empire and in Persia; but industry, and commerce are often restrained by irregular and ill-defined taxes. Spain affords many examples of misgovernment, and the injurious character of its taxation is shown in reference to this as well as other principles. To select one instance of uncertainty: "Every landowner is liable to have his *property taken in execution for*

government taxes, if he is not prepared to pay a half-year or more in advance, according to the difficulties of the Exchequer; consequently he is often compelled to make great sacrifices in order to meet such exigencies." (*Madrid in 1835*, vol. ii. p. 107.)

To levy a tax "at the time and in the manner most likely to be convenient for the contributor to pay it" is always a wise policy on the part of the state. The time or manner of payment may often be more vexatious than the amount of the tax itself, and thus have the evil effects of high taxation, while it produces no revenue to the state. Suppose, for example, that a merchant imports goods and is required to pay a duty upon them immediately and before he has found a market for them;—he must either advance the money himself or borrow it from others, and in either case he will be obliged to charge the purchaser of the goods with the interest; or he must sell the goods at once, not on account of any commercial occasion for the sale, but in order to avoid prepayment of the tax. If he pays the tax and holds the goods, the consumer will have to repay not only the tax but the interest; and if he parts with them at a loss or inconvenience, trade is injured, and the general wealth and consequent productiveness of taxation proportionately diminished. To prevent these evils the Bonding or Warehousing system was established in this country, which affords the most liberal convenience to the merchant and a general facility to trade. Certain warehouses are appointed under the charge of officers of the customs, in which goods may be deposited without being chargeable with duty until they are cleared for consumption, and thus the tax is paid when the article is wanted, and when it is least inconvenient to pay it.

Similar accommodation is granted on their own premises to the manufacturers of articles liable to excise duties. At present the customs bonding-warehouses are confined to the ports. An extension of them to inland towns would be sound in principle, very convenient to trade, and unattended by any serious risk to the revenue or difficulty of management.

The evils resulting from inconvenient modes of assessing and collecting taxes have been very seriously felt in this country under the operation of the excise laws. When any manufacture is subject to excise duties, the officers of the revenue have cognizance of every part of the process, inspect and control the premises and machinery of the manufacturer, and often even prescribe the mode of conducting and the times of commencing and completing each process; while the interference of numerous minute regulations is enforced by severe penalties. The manufacturer is put to great inconvenience and expense, and his ingenuity and resources are constantly interfered with in such a manner as to impede inventions and improvements, and to diminish his profits. A London distiller stated to the Commissioners of Excise Inquiry, that assuming that the duties on spirits distilled by him should be fully secured to the revenue, "it would be well worth his while to pay about a-year for the privilege of exemption from excise interference." (*Digest of Reports of Commissioners of Excise Inquiry*, p. 16.)

Any injury done to trade is injurious to the state by diminishing the national wealth and the employment of labour. It has the same effect also upon the revenue as excessive taxation. The high price of the article limits the consumption and consequently the revenue arising from it. The injurious effects of the excise restrictions "must be felt in an accumulated degree by the public who are the consumers, against whom the tax operates by the addition made to the price of the commodity, not only by its direct amount, but by the necessity of compensating the manufacturer for his advance of capital in defraying it, and also by the increased cost of production." (*Ibid.*, p. 16.) In the case of a heavy tax, which also diminishes consumption, the state, at least, derives some benefit; but in the case of onerous restrictions and impediments to trade caused by the mode of collecting a tax, the state gains nothing whatever, and the manufacturer and the consumer are seriously injured, without an equivalent to any party. If the consumer must suffer, it should, at least, be

for the benefit of the revenue, the contributions may be found some other direction. Some has been said, of late years, in favour of the excise system chiefly by the Commissioners of the revenue under the able direction of Mr. Percell. Various restrictions have been removed, especially those on manufactures of glass, and it is hoped that the excise system would be capable of being collected inflicting greater injuries upon other branches of taxation.

The net produce of a tax to the state is interested in, and is any violation of the fourth as Adam Smith is held to the notions as those already stated in to the third. Such violation is the amount of the tax directly levied was shown to increase really, without any advantage to the facility of collection is a good foundation to any tax; and, on the contrary, a disproportion between the of collecting and the amount secured is a good ground for the tax, though touched, in other upon just principles. The the alone, as well as for the general welfare of trade, it has been a way to reduce, as far as possible, the of articles upon which custom is levied. The cost of collecting the upon the larger and more profitable articles of import bears only a proportion to the amount of the tax the expense of collecting the to the smaller and less productive, bears a large proportion to the way in some cases exceed it.

In England there is little if from year to year on the excise collection, but there is a considerable proportion in the cost of collection to the branches of the revenue; the excise cost of 1s. 7d. per cent collection; the assessed taxes 1s. and the revenue arising from each 2l. 5s. 4d.

The French revenue is rather much greater cost. For some years the average revenue of that country was 1,600,000,000 francs, or 60,000,000

expenses of managing and collecting that sum have amounted to 100 francs, or 5,000,000*l.*, being less 15 per cent. (*Commercial Part IV., France, 1842, p. 11.*) It probably that many items may be lost in the French calculation of cost of collection which are not in the English accounts; but liberal allowance on that account, disproportion remains between the collecting the revenue in the taxes. It may perhaps be fairly that the revenue of France costs much in the collection as that of

The expenses of collecting a may be high without any real the mode of taxation. An tax may be collected in a bad either by having numerous idle paid officers, or by cumbersome us and checks, which may cost revenue much and protect the very little. Of these two causes so it is difficult to pronounce most injurious to a country, but will generally be found to of a general system of ill-expenditure; the latter may in unwise precautions for the of the revenue. In France the a number of official persons is, and in that fact we must seek sin cause of the enormous cost ing the revenue.

on Kinds of Taxes.—In selecting raising the revenue of a state, principles already discussed should be to as far as possible; but these limit not any particular mode of as preferable to others. What- of raising the necessary funds and to press must equally upon members of the community, to able to objections of uncertainty, evidence in the mode or time of or to be attended with the least is fairly open to the choice of an; unless objections of some are can be proved to outweigh immoderations.

on great divisions under which a may be classed are *direct* and

paid from the income of the community. To derive revenue from capital is to act the part of a spendthrift; and such a practice, as in private life, must be condemned. If the taxes of any country should become so disproportioned to its income, that in order to pay them continual demands must be made upon its capital, its resources would fall, employment of labour would decrease, and the revenue must necessarily be reduced by the general impoverishment of the tax-payers. Such a system could not long continue as regards all capital, but it may affect particular branches of capital, or all capital in certain conditions. In whatever degree it is permitted to operate it is injurious. A tax upon legacies is a direct deduction from capital; and on that account objectionable, although it is profitable to the treasury and very easily collected. [LEGACY, PROBATE.] The same observations apply to the probate duty, and to duties charged upon succession to the personal property of intestates.

With these exceptions it has been the object of the British legislature to derive all taxes from income, either by direct assessment or by means of the voluntary expenditure of the people upon taxed commodities.

Direct taxes upon the land have been universally resorted to by all nations. In countries without commerce, land is the only source from which a revenue can be derived. In most of the Eastern monarchies the greater part of the revenue has usually been raised by heavy taxes upon the soil; and in Spain, at the present time, the taxes upon the soil are most oppressive and injurious.

In England, under the Saxon kings, there was a land tax. When the invasions of the Danes became frequent, it was customary to purchase their forbearance by large sums of money; and, as the ordinary revenues of the crown were not sufficient, a tax was imposed on every hide of land in the kingdom. This tax seems to have been first imposed A.D. 991, and was called Danegeld, or Danish tax or tribute. (*Saxon Chronicle*, by Ingram, p. 166.) It was originally one shilling for each hide of land, but afterwards rose to seven; it then fell to four

There.—All taxes ought to be

shillings, at which rate it remained till it was abolished, about seventy years after the Norman conquest. (Henry, *Hist.* vol. iii. p. 368.) A revenue still continued to be derived, under different names, from assessments upon all persons holding lands, which, however, became merged in the general subsidies introduced in the reigns of Richard II. and Henry IV. During the troubles in the reign of Charles I. and the Commonwealth, the practice of laying weekly and monthly assessments of specific sums upon the several counties was resorted to, and was found so profitable, that after the Restoration the ancient mode of granting subsidies was renewed on two occasions only. (*Report of House of Commons on Land Tax as affecting Catholics*, 1828.) In 1692, a new valuation of estates was made, and certain payments were apportioned to each county and hundred or other division. For upwards of a century the tax was payable under annual acts, and varied in amount, from one shilling in the pound to four shillings; at which latter sum it was made perpetual by the 38 Geo. III. c. 60; subject, however, to redemption by the landowners upon certain conditions. But no new valuation of the land has been made, and the proportion chargeable to each district has continued the same as it was in the time of King William III., as regulated by the act of 1692. That assessment is said not to have been accurate even at that time, and of course improved cultivation and the application of capital during the last 150 years have completely changed the relative value of different portions of the soil. On account of the generally increased productiveness of land, the tax bears upon the whole a trifling proportion to the rent, yet its inequality is very great. For instance, in Bedfordshire, it amounts to 2s. 1d. in the pound; in Surrey, to 1s. 1d.; in Durham, to 3d.; in Lancashire, to 2d.; and in Scotland, to 2d. (*Appendix to Third Report on Agricultural Distress*, 1836, p. 545.) Adam Smith imagined that this tax was borne entirely by the landlords, but this opinion has been proved to be erroneous by modern political economists, who hold that the tax increases the price

of the produce of the land, and is therefore paid by the consumers. The tax is also obviously objectionable on the ground of inequality.

A tax upon the gross rent of land would fall upon the landlord, and would be in fact a tax upon his annual income, and as such would fall with undue severity upon him, unless other classes of the community should be liable to a proportionate deduction from their respective incomes for the benefit of the state. This brings us to consider the expediency of a general tax upon all incomes.

In whatever form the tax may be levied, the contribution should be paid from income, and not from capital; and accordingly the simplest and most equitable mode of taxation would appear to be that which, after assessing the annual income of each person arising from all sources, should take from him, directly, a certain proportion of his income as his share of the general contribution. Such a tax, equitably levied, would appear to agree in theory with all the four maxims of Adam Smith; but, practically, every man's income must abound in inequalities, in uncertainty, and in great personal hardships and inconvenience.

In order to make such a tax fall equally upon all, in the first place, the assessment must be equal. But this is impossible, because there are many cases in which a man can conceal the source of his income. Even if we suppose the actual income of each individual to be ascertained, the mere income of persons is a most fallacious test of their ability to bear taxation. One man has a fee-simple estate in land, or money in funds, producing an income of 1000*l.* a year, which land or money is his absolute property, and may come to his child after his death; another, by a laborious and uncertain profession, also obtains an annual income of 1000*l.*, dependent only upon his life, but upon his death and a thousand accidents. The annual incomes of these two men are the same, but their circumstances are most dissimilar. Yet these two men, with incomes so unequal, would be assessed alike, and charged with equal contributions. The professional man may spend the whole

his income, and yet he is charged as if it just as if it were the annual profit of realized property. If he saves part of his income, he is charged for that part, and thus his *capital* is taxed.

The case of annuitants also may be cited as one, amongst numerous, of peculiar inequality. One person invests his money in permanent annuities, and retains his capital, but receives a small income, and therefore contributes a proportionally small rate of tax; another purchases an annuity, parts with his capital; but as his income is much larger than that of the first, he pays a higher tax. At first sight this may appear a just arrangement; in fact not only the income of the annuitant is taxed, but also his capital; that which is taxed as his income is levied partly from the interest of his share-money, and partly from an actual repayment of a portion of his capital.

There is this essential difference between taxes upon income and taxes upon expenditure: the former are compulsory, the latter are voluntary, and paid or not at the option of each individual. A man may be saving money, an income-tax is levied upon his accruing capital; a tax upon expenditure is levied upon that portion of his income only which he chooses it prudent to spend.

It is smooth in some degree the inequality of an income-tax; 1st, the annual returns on policies of insurance should be reckoned as income in the assessment, being clearly capital, and the payment being no longer optional, as the former would not be discontinued without notice; this provision was made by Mr.

In 1798. Secondly, incomes arising from realized property should be taxed at a higher rate than the profits of trades or professions; 3rdly, annuitants should be taxed on such terms as to avoid the payment of any portion of their capital out of their income; 4thly, all persons should be liable to the tax, whatever be the amount of their incomes.

In addition to the unequal pressure of an income-tax, which cannot be altogether corrected by any expedients, there

tax, &c.

is much uncertainty in the assessment of certain classes of persons. The vicissitudes of trade, bad debts, or deferred payments, render the incomes of commercial and professional men very uncertain; and nominal income therefore, which afterwards cannot be realized, may be charged with the tax.

But the last and strongest of the objections to an income-tax is the inquisitorial nature of the investigation into the affairs of all men, which is necessary to secure a statement of their incomes. This objection, indeed, is treated lightly by some; but by the mass of the contributors it is considered the most inconvenient and unreasonable quality of an income-tax. Even if the exposure of a man's affairs could do him no possible injury, yet as an offence to his feelings, or even caprice, it is a hardship which is not involved in the payment of other taxes. But apart from matters of feeling, injury of a real character is also inflicted upon individuals by an exposure of their means and sources of income. Mercantile men, from the dread of competition, take pains to conceal from others, especially if in the same business, the application of their capital, the rate of profit realized, their connections, and their credit, all of which must be disclosed, perhaps to their serious injury, when there is an investigation of their profits.

For these reasons, the mode of collecting the income-tax certainly cannot be approved of as being "most likely to be convenient to the contributor." Its general unpopularity when in operation is the best proof of its hardship and inconvenience. Upon the whole, a tax upon income is so difficult to adjust equitably to the means of individuals, and the mode of collection is necessarily liable to such strong objection, that, if resorted to at all, it should be reserved for extraordinary occasions of state necessity or danger, when ordinary sources of revenue cannot safely be relied on.

The English assessed taxes have as few objections in principle as most modes of direct taxation. With an equitable assessment and special exemptions in certain cases, they are capable of being made to bear a tolerably just proportion to the

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incomes of the individuals paying them. They share, however, in the general unpopularity of all direct taxes, and it cannot be denied that they often press unequally upon particular persons. The number of windows in a house is a very imperfect criterion of its annual value, and the house-tax which has been removed was far preferable to the window-duty, which is still retained. The inequalities in the assessments were undeniable; but these might have been corrected. Under ordinary circumstances, a tax upon houses will fall upon the occupier, who is intended to pay it; but if a very heavy tax were imposed, it would discourage the occupation of houses, lessen the demand for them, and thereby diminish the rent of the landlord, or, in other words, transfer the actual payment to him. (Adam Smith, book 5, chap. ii.; Ricardo's *Political Economy*, chap. xiv.) Such a tax would be attended with very bad consequences: it would compel many persons to live in inferior houses or in lodgings, and thus diminish their comforts and deteriorate their habits of life; and by reducing the demand for houses it would limit the employment of capital and labour in building. The direct taxes upon horses, carriages, hair-powder, armorial bearings, &c., being paid voluntarily by the rich to gratify their own taste for luxury or display, are not likely to meet with many objectors. The use of such articles generally indicates the scale of income enjoyed by the contributor, and the tax is too light to discourage expenditure or to make any sensible deduction from his means.

For arguments and illustrations concerning the incidence of tithes, of taxes upon profits, upon wages, and other descriptions of direct imposts, we refer to the works of Adam Smith, Ricardo, McCulloch, and other writers upon political economy.

Indirect Taxes.—In preferring one tax to another, a statesman may be influenced by political considerations, as well as by strict views of financial expediency, and nothing is more likely to determine his choice than the probability of a cheerful acquiescence on the part of the people. All taxes are disliked, and the more

directly and distinctly they are required to be paid, the more hateful they become. On this, as well as on other grounds, direct taxes, or taxes upon the consumption of various articles of merchandise have been in favour with most governments. "Taxes upon merchandise," Montesquieu, "are felt the least by people, because no formal demand is made upon them. They can be so wisely contrived, that the people shall scarcely know that they pay them. For this end, of great consequence that the seller pay the tax. He knows well that he must not pay it for himself; and the buyer who pays it in the end, confounds it with the price." (*Esprit des Loix*, livre 5, chap. vii.) This effect of indirect taxes is apt to be undervalued by writers on political economy; but it is undoubtedly a great merit in any system of taxation (which is but a part of general government) that it should be popular and give rise to discontent. A tax that is positively injurious to the very party who pay it without thought, is certainly not to be defended merely on the ground that no complaints are made of it; but may be safely admitted as a principle that of two taxes equally good in all respects, that is the best which is most acceptable to the people. The very facility, however, with which indirect taxes may be levied, makes it necessary to consider the incidents and effects of the tax with peculiar caution. The statesman has no warning, as in the cases of direct taxes, that evils are caused by an impost which is productive and which every one seems willing to pay. When any branch of industry is visibly declining, and its failure can be traced to no other cause than the discouraging pressure of a tax, the necessity of relief is felt at once; but if trade and manufactures are flourishing, and the country advancing in prosperity, it is difficult to detect the latent influence of taxes in restraining that progress which but for them would have been greater; and still more difficult to imagine the new sources of wealth which might have been laid open if such taxes had not existed, or had been less heavy, or had been collected at different times or in different ways.

the government is directly interested in the increase of national wealth, and upon commodities should be allowed to interfere with it as little as possible. This account duties upon raw materials objectionable. They increase the price of such materials, and thus limit the power of the manufacturer to purchase them, and to employ labour in increasing the value, and in adding to the productive capital of the country. They discourage foreign commerce and the extension of shipping; for as the power of buying is restrained, so also is that of selling, and the interchange of merchandise between different countries is checked. Moreover, by increasing the price of the exported manufactures, they diminish the demand for them abroad, and set them to dangerous competition. Similar objections may be urged against taxes upon domestic manufactures, since by increasing the price they diminish consumption, and consequently discourage the manufactures, which if left to themselves would have given employment to more capital and labour, and so have added greatly to the amount of national wealth and prosperity. The duty of a government should always be to direct its revenue from the results of useful employment of capital and industry, and not to press upon any intermediate stage of production.

The British legislature has of late years wisely repealed or reduced various taxes upon raw materials and upon manufactures. Of the former we may instance the customs' duties on barilla; on waste, or thrown silk; on cotton-wool and sheep's wool, unwrought-iron, &c. and flax; and, above all, upon sugar, which have been from time to time very much reduced or repealed. Of the latter, the taxes on printed goods, on lace, and on tiles, have been altogether removed; and those on malt, and on wine, have been partially remitted. As one of the most important recent alterations in the Taxation, there are still many similar taxes which need revision. One of the chief recommendations of the late report is, that, when placed upon any description of articles, the payment of them by the consumer is optional.

If charged upon what may be strictly called the necessities of life, their payment becomes compulsory, and falls with unequal weight upon labour. Competition generally reduces a large proportion of the working classes to a state which allows them little if anything beyond the necessities; consequently a duty upon these, as it will have no effect in diminishing the competition of labour and in raising wages, must reduce the comforts and abate the subsistence of labouring men.

That class of articles commonly called luxuries, of which the consumption is optional, is a fair subject of taxation. In principle there is no objection to such taxes: they do not interfere with industry or production, but are paid out of the incomes of the contributors, and paid willingly, and for the most part without undue pressure upon their means. But in laying on taxes upon particular articles of this description care must be taken to proportion the charge to the value of the article. Excessive duties fall in the very object they have in view, by rendering the revenue less productive than moderate duties; while the causes of their failure are injurious to the wealth of the country by discouraging consumption, and to its morals by offering an inducement to smuggling. [SARCOLINUS.]

High duties upon foreign articles imported into a country are liable to all the objections which apply to immoderate taxes upon articles of consumption, and they are chargeable with another—they diminish importation, and thereby restrict commercial intercourse and the demand for and exportation of domestic produce and manufactures.

The success of moderate duties upon articles of consumption, in encouraging the use of them, placing them within the reach of a larger number of persons, and at the same time augmenting the revenue, was never better shown than in the article of coffee. In 1824 the duty on British plantation coffee was 1s., upon East India 1s. 6d., and upon foreign coffee 2s. 6d. per lb. In 1825 those duties were reduced one-half, and the consequence was considerably more than a threefold increase in the consumption, while the

revenue in 1841 had been *more than* doubled.

In 1835 coffee, the produce of British possessions in India, was admitted at the same duty as plantation coffee, viz. 6d. per lb., and the effect of the reduction, in encouraging the growth of the plant in India and the consumption of the berry in this country, has already been very great, and perhaps the coffee-trade of the East may as yet be considered in its infancy. In 1834, the year before the reduction, 8,875,961 lbs. were imported from the East India Company's territories and Ceylon; and in 1840, 16,885,698 lbs., or nearly double. In 1842 the duty on foreign coffee was reduced to 8d. a lb., and on coffee the produce of British possessions, to 4d.; and notwithstanding so extensive a reduction the revenue has not very materially suffered.

Thus reductions of existing duties are proved by these examples to increase the revenue; but whether the effect of them be immediate or deferred must depend upon a variety of circumstances. If the reduction puts an end to extensive smuggling, the revenue will derive immediate benefit, as both the demand and the supply of the article already exist; and the reduced tax, without affecting production or consumption, acts as a police regulation, and at once protects the revenue from fraud. But where there is little or no smuggling, and the revenue can only be increased by means of additional consumption, the effect of reduced duties may be deferred and even remote. The article may have to be produced; capital, skill, labour, and time may be required to provide it in sufficient quantities to meet the growing demands of the consumer; and even should the supply become abundant, the habits and tastes of a people cannot be changed on a sudden. The high price of an article may have placed it out of their reach, and in the meanwhile they may have become attached to a favourite substitute, or may be slow to spend their money upon a commodity which they have learned to do without. These and other causes may defer for a considerable time such an increase of con-

sumption as would make up for reduced rate of tax, especially when reduction has been so great as to be an extraordinary addition to the present amount of consumption, before the service made in the revenue can be redressed. But where the article on which it is proposed to reduce a tax is already in universal request, and the supply immense and abundant, and where the tax is heavy as to restrain consumption, present loss need be apprehended; a remission of part of the tax, and a speedy increase of revenue may be expected. Sugar is an article of this description. It has become a necessary life as well as a favourite luxury. There are scarcely any limits to the supply which could be raised, and the present duty adds materially to the price and to the consumption. As a proof of the readiness with which the consumption of foreign sugar might be expected to increase if the excessive duty were reduced, we may refer to the effect of equalizing the duties on East and West India sugars in 1836. In that year duty on East India sugar was reduced from 32s. the cwt. to 24s. In 1835 quantity imported had been 147,000 cwt.; and in 1837, one year only after the change, the import had increased to 302,945 cwt.; in 1838, to 474,100 cwt. and in 1839, to 587,142 cwt. As the tax was diminished only by one-eighth and the consumption was increased more than doubled, the revenue was gained considerably by the reduction of duty.

A recent financial experiment may serve to show how little an increase of revenue can be depended upon as a result of an augmentation of taxes on articles of consumption. In 1840 an addition of 5 per cent. was made to all duties of customs and excise, and the proportionate increase of revenue was anticipated, but not realized. The duty on the produce of the customs and excise for the year ending January 5th, 1840, amounted to 37,911,508*l.* The estimated profit for the year ending January 5th, 1841, was 39,807,081*l.*, 1,895,573*l.* being expected from the additional 5 per cent. The actual increase, however, was

715*l.*, or little more than one-half cent., instead of the 5 per cent. it had been expected. This result undoubtedly in part caused by a general stagnation of trade, and by the consequent distress which prevailed in 1846, but we notice it because the principle of an indiscriminate augmentation of existing taxes, without reference to their present amount, character, circumstances, is very unwise. We are said that experience alone can show the precise rate of a particular tax which will not affect consumption and will at the same time discourage smuggling. It must be presumed that existing rates have been fixed in order to secure these ends, and that they are justified by experience. To add to them therefore, not use they are insufficient for their immediate object, but because a general addition to the revenue is needed, is to neglect experience and to disturb the proper relations between the amount of tax and the value of particular articles. During the last century it was a common official course to add a general percentage of increase upon all the customs' duties whenever the revenue was found to be insufficient for immediate purposes. This unwise policy must be attributed to the effect of the strange anomalies which existed in the British tariff. Any reference to so clumsy a mode of taxation should be avoided. The tax upon any article ought to be adjusted by it upon sound principles, and then it should not be changed merely to save trouble or to avoid the unpopularity of selecting particular articles for increased taxation or of inventing new ones.

Protective, Discriminating, and Protective Duties.—The legitimate object of taxation is that of obtaining a revenue in the least injurious manner for the benefit of the community; but this object has constantly been overlooked for the sake of ends not fairly to be accomplished by taxation. Legislature should endeavour to encourage agriculture, trade, manufactures; and it would be culpable to neglect any proper means of encouragement, which are not only beneficial to particular interests, but add to

the general prosperity. Unfortunately, however, the zeal of most legislatures upon this point has been misdirected. They have seized upon taxation as the instrument of protection and encouragement; and, using it as such, have injured the great mass of their own countrymen, and ultimately have failed in promoting the very interests they had intended to serve. When the system of protection has existed, severe injuries and even injustice are inflicted whenever an attempt is made to undo the mischief which has been done. Reason and experience unite in teaching the impolicy of protective taxes; and, in our own country, it is now acknowledged by the acts of the present year (1846) which regulate the trade in grain, meal, and flour, and other articles. [TARIFF.]

The object of a protective duty is to raise artificially the price of the produce of manufactures of one country as compared with the produce or manufactures of another. A heavy tax easily effects this object, and thus prevents competition on the part of that country whose commodities are taxed, and establishes a monopoly in the supply of those commodities in favour of the parties for whose benefit the tax was imposed. The revenue, the avowed object of a tax, so far from being improved, is here actually sacrificed by the exclusion of merchandise, which at moderate duties would fill the coffers of the state. The state clearly is a loser; the foreigner, whose goods are denied a market, is a loser. Who then gains by these losses? Not the consumer; for the more abundant the supply, the better and cheaper will he find the market; but the seller, who is enabled to obtain a high price for his wares because he has a monopoly in the sale of them, is the only party who gains. The community at large suffers doubly: first, by having to buy dear instead of cheap goods, or by being denied the use of them altogether; and, secondly, by being obliged to pay other taxes which would not have been required if the very articles which would have made their purchases cheaper had been charged with a moderate impost. Even the sellers, for whom all these sacrifices are made, do

not derive the benefit which might be expected. In the goods which they sell themselves, indeed, they are gainers; but in purchasing of other monopolists they lose by an artificially high price, like the rest of the community. It constantly happens too, that although the prices at which they sell are high, their profits are reduced, by the competition of others selling the same articles, to the general level of profits throughout the country. When this is the case, all parties, without exception, are losers—the state, the community, and the monopolists. The general injury done to trade by the protection system is too extensive a question to enter upon, but it is well illustrated in the 'Report of the Committee of the House of Commons upon Import Duties' in 1840; and the best refutation of the fallacies on which it is rested is in the debates in Parliament within the last few years, and especially during the present year, 1846, which has been rendered memorable by the acts above referred to.

Protection may be accomplished by actual prohibition of the import of particular articles, by exorbitant duties which amount to prohibition, or by such duties only as give the home producer an advantage. Duties may also discriminate between the produce of different countries, and give the preference to some, to the injury and exclusion of others. In this country all these modes of protection have been resorted to: but their impolicy has been recognised by the legislature, which, within the last few years, has advanced rapidly in the adoption of a more sound system of taxation. [TARIFF.]

Duties are called discriminating or differential when they are not levied equally upon the produce or manufactures of different countries. The object of them is to give an advantage to the country on whose commodities the tax is lightest, as compared with others. To obtain such a preference has been the object of various negotiations and commercial treaties between different states, as it opens extensive markets to the industry of the favoured nation. By the present commercial policy of Eng-

land, the principle of discrimination is said to be confined to that of our colonies against the rest of foreign countries. As regards other, all foreign countries are commercial advantages in the course with England. It may be said that colonies form an out-let of the mother-country, and that commercial intercourse between the parts of the British empire may be viewed as a vast meeting-place; this principle were acted upon, certainly present a grand and worthy of admiration; but the system does not partake in any of the character of a meeting-place put it upon such a footing, the colonial produce imported into the Kingdom should be little or nominal, and we should rely on dutiable imports upon foreign for our revenue. Our practice is the reverse of this. Where our tariff discriminates, we derive our revenue from the colonial produce; and we exclude foreign produce altogether, limit its introduction so much as to prevent it from constituting much the revenue. The object of it upon the foreign produce, who enter into competition with the is not revenue, but exclusion, sake of creating a monopoly in the latter. There are two great of consumption, sugar and gum which the discriminating duties have been most mischievous in them. The question of sugar is now under consideration, and will be satisfactorily settled. The population of the country has increased, and with it the demand for most articles of consumption, that of sugar is so restrained by commercial policy that, in 1831, 300,000 cwt. were retained for home consumption, and in 1840 only 3,500,000. So inadequate have the colonies been to supply our wants, that exports have actually been done. In 1831 the West India exports to the United Kingdom 4,103,000 cwt. the succeeding year has their export great; and in 1840 it had more

1224,764 cwt. During this period consumption of coffee, cocoa, and tea

considerably increased, and the island therefore have suffered a serious privation on account of the limited supply of sugar. The community is a victim to the colonial monopoly; and the export of the produce of the West Indies, in spite of an increasing demand, is not the only point that they have gained much by their protection: while the revenue has lost incalculable sums by the exclusion of foreign goods, which, with moderate duties, might be imported at a low price in unlimited quantities.

The discriminating duties upon timber have been very considerably modified. On the 5th April, 1847, the duty upon imported timber will be reduced to 20s. and, on the 5th April, 1848, to 10s.

The duty upon colonial timber is 10s. The effect of these alterations is to reduce the bounty upon colonial timber from 45s. the load to 14s.

Export Duties.—Duties levied upon goods exported to foreign countries are usually paid by the foreign consumer, thus have the effect of making the cost of our goods bear the burthen of duty. However desirable this may be to the state, whose treasury is filled at the expense of foreigners, the efficacy of such duties will depend on peculiar circumstances, and greatly is required in the regulation of trade. If a country possesses within it some produce or manufacture much sought abroad, and for the production of which it has peculiar advantages, a moderate export duty may be very desirable. In this manner Russia, which not alone supplies tallow to the rest of Europe, derives a considerable revenue from an export duty upon that article. In the same principle a duty upon machinery exported from Great Britain will have been politic. British manufactures excel all others in skill, ingenuity, and foreign manufacturers are willing to pay almost any price for our machinery. Notwithstanding the enormous large quantities have been exported abroad at an enormous cost, the difficulty and expense of evasion

have been so great that foreigners have hitherto almost confined their purchases, in this country, to models and drawings, and have made the machinery themselves, with the assistance of British artisans, whom they have employed abroad by extravagant wages. (*Reports of Committees of the House of Commons on Artizans and Machinery*, in 1824 and 1835, and *On the Exportation of Machinery*, 1841.) If, instead of prohibiting the export, a duty of 7½ or 10 per cent. ad valorem had been imposed, foreign manufacturers would have paid much less for the machinery purchased by them in England than they could have had it made for abroad; there would have been a large export trade from this country, and a considerable revenue. The partial relaxation of the prohibitory law in 1825, by granting licences to export certain kinds of machinery, has shown the extent to which the trade might have been carried under a more liberal policy. The official value of machinery exported under licence in 1840 was 1023,064*l.*, in addition to various tools allowed by law to be exported, of which no account was taken. (*Sea. Paper*, 1841, No. 391, p. 257.)

Though moderate export duties upon articles of which a country has almost the exclusive supply may be advisable, heavy duties will check the demand abroad in the same manner as they affect the consumption of commodities at home. In the same manner also they are injurious to trade and unprofitable to the revenue.

All duties whatever should be avoided upon the export of produce or manufactures which may be also sent from other countries to the same markets. They would discourage trade and offer a premium to foreign competition.

Although the temptation is great to shift taxes from one country to another by means of export duties, this temptation is equally great in all countries; and if their several governments should be actuated by the desire to make foreigners contribute to their revenue, their opportunities for carrying out such a system would probably be equal, and thus retaliation might be made upon each other.

which, after all, would neutralize their efforts to tax foreigners, and leave them in the same position as if they had been contented to tax none but their own subjects. In this power of retaliation lies the antidote to the evil of one state being forced to bear the burthens of another as well as its own. Every state would naturally resist such an imposition upon its subjects, and export duties can therefore only be safely resorted to in such peculiar cases as we have noticed, where foreigners are willing to pay an increased price for commodities which they must have, and which they cannot obtain so good or so cheap from any other place.

Roman Land Tax.—Under LAND TAX, ROMAN, a reference was made to this article.

The old Roman *Tributum* was in effect chiefly a land tax. It is described by Niebuhr (i. 459, Engl. tr.) "as a direct tax upon objects, without any regard to their produce, like a land and house tax: indeed, this formed the main part of it; included however in the general return of the census." He states that it was by the plebs that this regular tax according to the census was paid, and its name *Tributum* was deduced from the tribes (*tribus*) of this order. All this, however, is vaguely stated and ill supported by proof. There seems no reason to doubt that the nobles (*patres*) also paid *tributum*. Livy (ii. 9) states that the plebs were released from *portoria* (port duties and tolls) and the *tributum*, in order that the rich alone might pay it. But neither is this statement satisfactory. The *tributum* is often mentioned by Livy (iv. 60; v. 10, 12; vi. 32; xxiv. 15; xxxix. 7, 44), but nothing precise can be stated about it, except that it was a tax on property, was paid in money, and applied to maintain the army after a certain date (Livy, ii. 59), and for other public purposes. The *tributum* was paid until the close of the Macedonian war, B.C. 147, when the Roman treasury was replenished by the conquest of Macedonia. It was not restored near the close of the Republican period, as is sometimes erroneously stated.

From the end of the Macedonian war

the revenue of the state chiefly arose from the taxes levied in the provinces, a great part of which were paid in kind. [CONTRASTED ROMAN.] Italy continued free from direct taxes, though the provinces paid them, until the time of the Emperor Maximian, who established the provincial taxation in Italy. The freedom of land in Italy from all tax made a marked distinction between Italian and provincial land, and this was one of the peculiar privileges comprehended in the term *Jus Italicum*. When a provincial city received a grant of the *Jus Italicum*, it received with other privileges that of exemption from land tax: the land was then considered to be Italian land. The provincial taxes consisted of money payments and of contributions in kind, as already stated. Under Augustus a commencement was made of a general reparation of property (*cadastre*), the object of which was to change all the taxes into a money payment. We may trace the progress of this change: in Cicero's time the tenths of the province of Asia were leased to the *Publicani*; in the time of Trajan a fixed sum was paid. It appears that before the time of Ulpian, who lived under the Emperor Alexander Severus, the new system was completed; and it is collected from Gaius (ii. 21), who says that provincial lands were subject either to *stipendium* or *tributum*, that this system must have been partially established even when he wrote, which was in the age of the Antonines. It is worthy of note that Cicero (*In Verem*, iii. 6) contrasts the "*vectigal certum*," or "*stipendiarium*," a fixed payment, which at that time obtained in some cases, with the "*censoria locatio*," the leasing of the tenths. Under the Christian emperors, the country was divided into equal portions of land called *capita* (heads), each of which *capita* paid a certain sum of money; and the amount of tax required for each year was distributed (*indictum*) over these several *capita*. The *cadastre* was renewed every fifteen years, and on this was founded the use of the cycle of *indictions*, a term which survived the system of taxation to which it owed its origin. The change of payment of taxes in kind into a money payment was in

proved financial measure, and it must have been beneficial to agriculture. It is so that it also offered facilities for imposing a heavier taxation whenever the government had or pretended to have a necessity for it.

The subject is discussed by Savigny, *Zeitschrift für Geschichtliche Rechtswiss.*, xl., *Ueber die Röm. Steuerverfassung*; also by Duran de la Malle, *Economie politique des Romains*, ii. 402—437, who seems from some of Savigny's opinions, that the opinion of Savigny has been followed here.

TAXES. The general objects, character, and principles of taxation, and of different classes of taxes, are treated of under the head of **TAXATION**. In this section it is proposed to give a short summary of the amount and description of taxes paid in Great Britain and Ireland, whether assessed directly upon property, or collected indirectly upon articles of consumption; including not only such taxes as are paid to the general government, but also all municipal and local assessments or contributions.

United Kingdom.

The chief sources of revenue are from direct taxes, as will be seen by the following statement, made up to 5th January, 1842:—

	Gross Receipt, £	Rate per cent. at which collected, £ s. d.
Customs . . .	23,821,486	5 6 4
Excise . . .	15,477,674	6 7 8½
Stamps . . .	7,494,339	2 3 4
Taxes (Assessed, Sec.). . .	4,720,457	4 2 9½
Post-Office . .	1,539,274	60 9 6½
Stamps on Pen- sions and Sal- aries . . .	5,752	1 17 6½
Town Lands . .	438,297	8 18 3½
Small branches of hereditary revenue . . .	5,562	
Surplus fees of public offices	93,504	
Total ordinary revenues . . .	55,596,250	6 13 8½

The assessed taxes are the window-tax,

tax on male servants, taxes on carriages, on horses, on dogs, armorial bearings, horse-dealers' duty, game duties, stage-coach duties, and duties on passengers conveyed for hire by carriages travelling on railways. In 1840 (3 & 4 Vict. c. 17), 10 per cent. additional was imposed on all the assessed taxes.

Farm-houses belonging to farms under 200*l.* a year are exempt from window duty. Bachelors, except Roman Catholic clergymen, pay an additional duty of 1*l.* on male servants. [BACHELOR.] The charges for game duties are stated under **GAME LAWS**. The duty on passengers conveyed for hire by carriages travelling on railways is 5 per cent. on the gross amount of the fares. As to the duties on stage-coaches, see **STAGE-CARRIAGE**.

To these parliamentary taxes may be added the following local assessments:—

Poor-rates £6,351,628 (which includes county rates, 700,000*l.*)

Church-rates 600,000 (in round numbers.)

Highway-rates 1,312,812

Turnpike-tolls

(England

and Wales) 1,577,764

Grand-jury

presentments

(Ireland) . 1,265,866

Total of local
taxes . . 11,108,270

(*Parliamentary Papers*, 1839 (562), 1841 (344) (421), 1842 (135) (235).)

Since the year 1842 considerable changes have been made in the Customs, some of which changes are mentioned under **TARIFF**. In the Excise also changes have been made. The excise-duty on glass has been taken off. But, on the other hand, since 5th April, 1842, the income-tax has been in operation. The income-tax was imposed April 5th, 1842, for three years, and has been renewed for another three years. In consequence of all these changes some years will elapse before it will be possible to say how far the increased consumption will make up for the direct reduction in the revenue by the diminution and repeal

withstanding the total removal of some duties and of the excise on glass and the great reduction made in other duties. If the quarters ending July 5th in the years 1846, 1845, respectively, are compared, there is an increase on the quarter for 1846, compared with that of 1845, of 575,599*l.*, and this is the first quarter in 1845 in which many reductions took effect, while business has been materially injured in the corresponding quarter of 1846 by the delay in passing the Corn Repeal Bill and the Customs' Bill. (TARIFF.) Under these circumstances the prospect of at least an equal revenue with a reduced taxation seems to be assured, and at the same time the consumer and all classes of industrious persons are benefited by the reduction in taxation.

The tithes of Great Britain and Ireland are said to amount to 4,000,000*l.*

It is instructive to compare the present amount of taxes with that rendered necessary by a war expenditure. From 1805 to 1818 the payments into the British exchequer from taxes and loans in no one year amounted to less than 100,000,000*l.*, and in 1813 arose to the enormous sum of 176,346,023*l.*

There was published under the direction of the Poor-Law Commissioners in 1846 a valuable work, entitled "The

The Survey and Valuation of the Poor." 1. The Jail Poor Rate. 2. The County Poor Rate. 3. The Highway Rates. 4. The Lighting and Watching Rates. 5. The Militia Rates. No. II. County Rates.—1. The Church Rates (three). 2. The Sewer Rate. 3. The General Rates. 4. The Drainage and Inclosure Rates. 5. The Inclosure Rate. 6. The Regulated Pasture Rate. No. III. The Prebends.—Counties. 1. The County Rates. 2. The Police Rate. 3. The Watch Rate. 4. The Lunatic Asylum Rate. 5. The Burial Rate.—Hundred Rates.—Boroughs. 1. The Watch Rate. 2. The Jail Rate. 3. The Prisoner Rate. 4. The Lunatic Asylum Rate. 5. The Museum Rate.—Counties and Boroughs. 1. The District Prison Rates.

The nature of many of these rates may be collected from the list of rates and the articles referred to in the article. The nature of these rates are not particularly mentioned in the Dictionary, is fully explained in the published under the direction of the Poor-Law Commissioners.

The head of Tolls, Dues, and Taxes, comprehends—1, Turnpike Tolls. 2, Borough Tolls and Dues. 3, Dues and Post Dues. 4, Ferry

	£
fish Rates:—	
rate, including the	
arkhouse Building Rate,	
the Survey and Val-	
uation Rate	
of the Poor	4,976,098
objects	567,567
distributions to County and	
rough Rates	See below
Jail Fees' Rate . . .	Unknown
Constables' Rate . .	do.
Highway Rates . . .	1,312,812
Lighting and Watching	
te	Unknown
Militia Rate	Not needed
Church Rates	506,813
sewer Rates, and the	
eral Rates' Tax—	
e Metropolis	82,097
e rest of the country .	Unknown
ge and Inclosure Rates,	
Inclosure Rate, The	
ated Pasture Rate . .	Unknown
uty Rates } Contributed	
ndred Rate } from the	
rough Rate } Poor-Rate } 1,356,457	
	£8,801,838
Dues, and Fees . . .	2,607,241
	£11,409,079

of the taxes are regularly in-
g, and the produce of some, as
from this table, is not known,
sumed that the Local Taxation of
d and Wales may be in round
e twelve millions; but this esti-
e already shown, does not include
is raised under special or local
the amount of which sums no ex-
can be formed.
entury ago the Poor-Rate was about
H.; it is now about 7,000,000L.
t it was 9,320,000L. But the sums
nder the name of the Poor-Rate
ended on various purposes besides
ef of the poor,
work published under the direc-
the Poor-Law Commissioners con-
chapter on the Local Taxes of
d written at the request of the
ew Commissioners by J. Hill
Advocate, Edinburgh.

The Local Taxes in Scotland are dis-
tributed by Mr. Burton under the follow-
ing heads:—

I. Administration of Justice, which
includes Criminal Prosecutions, Court
Rooms and County Buildings, Rural
Police, Town Police, Prisons. II. In-
ternal Transit, which includes Commu-
tation Roads, Turnpike Roads, Highland
Roads and Bridges. III. Navigation.
IV. Civic Economy, which includes,
Direct Municipal Taxes, Petty Customs,
Miscellaneous Burdens. V. Relief of
the Poor. VI. The Church and Edu-
cation, which includes The Church of
Scotland Education. VII. Miscella-
neous Taxes.

Mr. Burton observes "that the money
expended on the ecclesiastical establish-
ment and on education, partakes, in some
respects, of the nature of a tax." The
amount of money annually levied by
local taxation in Scotland is not accu-
rately known. The sum of 956,678L. is
the approximate amount given by Mr.
Burton.

The Local Rates levied in Ireland are
distributed under the following heads in
the work published under the direction
of the Poor-Law Commissioners.

- I. Grand Jury Cess (in all the
counties, including counties of
cities and towns).
- II. Poor-Rates (in 130 Unions, com-
prising every townland and
denomination of land in Ire-
land).
- III. Lighting, Cleansing, and Watch-
ing Rates (in all cities, towns,
and boroughs which may adopt
the provisions of the statute).
- IV. Borough Rates (in certain Bo-
roughs).
- V. Pipe Water Rates (in every city
and town, except Dublin, Cork,
and Limerick, which gives title
to a bishop or archbishop).
- VI. Parish Cess (in all parishes,
unions of parishes, or chapelries
in Ireland).
- VII. Rates for deserted children (in
all parishes in Ireland, except
those in the city of Cork).
- VIII. Ministers' Money (in cities and
towns corporate in Ireland).

IX. Board of Health Rates (in parishes in which the lord lieutenant shall direct officers of health to be appointed).

"Besides the above rates leviable under general acts of parliament, there are rates leviable under special acts in many places, as Dublin, Cork," &c. No account is given in the work here referred to of the provisions of these special acts, but the amount of the sums levied under them, which is considerable in some places, is given so far as it has been obtained.

£

The rates for Ireland are given at	1,631,818
Tolls, Dues, and Fees	199,469

£1,831,287

The amount of annual local taxation of Great Britain and Ireland accordingly amounts to 14,197,044*l*. But it is observed that if the deficient information were supplied, it would appear to be at least 15,000,000*l*. a year; and this, as already observed, does not include the local taxes raised in particular places under special acts of parliament. The sum raised by general taxation in the United Kingdom for the year ended 5th January, 1846, was 51,719,118*l*. The amount of the local and general taxation is accordingly about 67,000,000*l*. a year. The public expenditure for the year ending 5th January, 1846, was 49,961,411*l*., of which sum 28,253,872*l*. was paid on account of the Funded and Unfunded Debt. This leaves somewhat under 21,000,000*l*. for the rest of the general public expenditure. Accordingly the present amount of the local taxation, 15,000,000*l*., is nearly equal to three-fourths of the public expenditure after deducting the payments on account of the Funded and Unfunded Debt. It is well remarked in the work from which these facts are derived (p. 199), "when the Local Taxes are brought under review in this collective amount, it then at once becomes manifest how really deserving of serious consideration are the modes of raising and expending them, so as to secure the most efficient and economical management of a revenue so large and important: a revenue, in-

deed, which derives its importance only from the largeness of its aggregate, but from the extent of the persons and the number of persons affected and from the numerous and diverse public objects to which it is applied.

Information about the several European States will be found in Parliamentary Paper, No. 227, ordered by the House of Commons printed, 3rd May, 1842.

TEA. The first importation by English East India Company took place in 1669 from the Company's factor Bantam. The directors ordered servants to "send home by their one hundred pounds weight of the tea they could get." In 1678, 470 were imported, but in the six following years the entire imports amounted to more than 410 *lbs*. The first official accounts of the trade do not commence before 1725; but, according to Millard (*Oriental Commerce*), the importation in 1711 was 141,994*l*. 129,695 *lbs*. in 1715; and 237,304 *lbs*. in 1720. In 1725 the quantity of tea taxed for consumption was 370,333 at which time the customs duty was 18*l*. 18*s*. 7*d*. per cent., and the excise was 4*s*. per *lb*. In 1745 the amount was 730,729 *lbs*., and in that year the excise was made 1*s*. per *lb*. and 25 per cent. on the price. In 1747 the customs duty was 18*l*. 18*s*. 7*d*. per cent. and the quantity in the year was 2,382,375. In 1759 the customs duty was 23*l*. 1*s*. 6*d*. per cent. and the quantity was 3,305 *lbs*. In 1782 the duty per cent. was 27*l*. 6*s*. 10*d*., the highest amount that duty ever reached, and there was increase in the excise also; the sum in the year was 4,691,000 *lbs*. In 1783 the quantity was 4,348,983. In 1785 the customs duty was 12*½* per cent. the excise duty was repealed; the quantity in that year was 10,856,578 *lbs*. In 1786 the customs duty was 5 per cent. on the gross price, and an excise duty of 7 per cent. on the gross price was laid on. The quantity in that year was 12,501,588. The quantity went on increasing to 1834, and in the meantime the excise duty was very little raised, and in 1834 it was repealed. The excise duties

very often. When the customs were repealed in 1819, the excise was made 50 per cent. on the gross when it was under 2s. a lb., and 25 per cent. when it was above 2s. per lb. 1834 included, in which year the duty was repealed, the quantities year to 1841 and the excises were as follows:—

1,209,551	Boku, 1s. 6d.;	Excise
	Congon/Twan-	duty
	key, &c. 2s. 6d.;	repealed.
	Hyson, &c., 3s.	
	per lb.	
1,574,045	"	"
1,144,235	After 1st July	"
	all sorts 2s. 1d.	
	per lb.	
1,025,006	"	"
1,551,593	"	"
1,327,287	"	"
1,051,628	2s. 2½d.	"
1,075,007	"	"
1,055,211	"	"
1,033,393	"	"
1,063,770	"	"

where a century and a half the tea of the East India Company's in China was to provide tea for consumption of the United Kingdom. company had an exclusive trade, to send to send orders for tea, provide ships to import the same, to have a year's consumption of warehouses. The tea were sold in London, where only they were imported, at quarterly sales; and every was bound to sell them to the highest bidder, provided an advance penny per lb. was made on the which each lot was put up, which was determined by adding together the cost at Canton and the bare of freight, insurance, interest on and certain charges on importation by the mode of calculating them, and the heavier expenses always attend every department sale monopoly, the upset prices were not enhanced. The prices of the Company's sales were, however, still greater proportion beyond the prices, a result easily pro-

duced by a body who monopolized the sole supply, as it was only necessary that the quantity offered for sale should not be augmented in proportion to the growing demand of a rapidly increasing population. The 18 Geo. II. c. 26, passed immediately after a large reduction of the duty had taken place, provided for such a contingency as this, by enacting that if the East India Company failed to import a quantity sufficient to render the price as low as in other parts of Europe, it should be lawful to grant licenses to other persons to import tea. This would have constituted a very efficient check if it had been acted upon; but eventually the mode of levying the duty gave the government almost the same interest in a restricted supply as the East India Company, the duties being collected *ad valorem* on the amount realized at the Company's sales; and thus the very circumstance which enhanced the price raised the total amount of duty. The duty was nominally 50 and 100 per cent. *ad valorem*, but being charged on a monopoly price, the difference on the cheaper teas contained by the working and middle classes amounted to above 300 per cent. on the cost price of the same teas at Hamburg; and in 1830 the difference between the prices realized at the Company's sales and the Hamburg prices amounted to a sum of 1,800,575*l.*

The Company's sales were in March, June, September, and December, the last being the largest. About 2,000,000*lb.* were offered belonging to the officers of the Company, who were allowed to import a certain quantity of tea on their own account. In 1839 there were only 122,312*lb.* offered for sale by the East India Company. The S & W. IV, c. 93, on the 22nd of April, 1834, opened the trade to China. The importation of tea is no longer confined to the port of London. In 1839 eighteen ships arrived inwards from China at different ports, ten of which were entered at Liverpool. In the four years ending 1834 the average annual number of ships entered inwards from China at the ports of the United Kingdom was 23, in the four following years the average was 16, and since that modification besides ten have been introduced.

imported, and a corresponding increase in the quantity and variety of the exports to China has taken place. The exports of tea from the United Kingdom, which formerly did not exceed a quarter of a million lbs. annually, amounted to 4,347,432 lbs. in 1841, and have averaged above three million lbs. a-year since the opening of the trade, a fact which shows that prices here are no longer so much above those of the principal continental ports. The quantity retained for consumption has also considerably increased, although accompanied by an extraordinary increase in the use of coffee.

The tea-duty produces about one-twelfth of the total revenue. The tariff of 1842 made no alteration in the tea-duty. As it was foreseen that on the opening of the tea-trade there would be a considerable reduction of price, and that an *ad valorem* duty would not, even with the increased consumption, be so productive as formerly, a fixed duty of 2s. 1d. per lb. was imposed in 1836. Up to March, 1836, each of the hundred thousand tea-dealers in the United Kingdom was visited once a month by the officers of excise, who took an account of his stock; and no quantity exceeding six pounds could be sent from his premises without a permit, of which above 800,000 were required in a year. The number of tea-dealers in 1839 was 82,794 in England; 13,011 in Scotland; 12,774 in Ireland: total 109,179. Tea is now sold by the importing merchants by public auction and private sales.

The following table shows the net amount which the tea-duty has yielded in the United Kingdom in each of the following years during the present century, and, to some extent, it is an index of the prices in each year.

	£		£
1801	1,423,660	1841	3,973,668
1810	3,647,737	1842	4,088,957
1820	3,484,226	1843	4,407,642
1830	3,387,097	1844	4,524,193
1840	3,472,864		

Between 1831 and 1841 the population increased 14 per cent., and the increase in the consumption of tea was $16\frac{1}{2}$ per cent. The low prices of 1836, and the general prosperous condition of the

country, raised the quantity of tea duty for consumption to nearly 50,000,000 lbs. In 1840 prices were about 10 per cent. higher, large classes of consumers were in a distressed state, and consumption fell to 32,000,000 lbs. The distress still continued, but was lower, and the consumption rose above 36,000,000 lbs. On the 5th of March, 1840, the stock of tea in London, Liverpool, Bristol, Glasgow, and Leeds was 35,478,490 lbs.; and at the corresponding period in 1841 the quantity was 46,000,000 lbs. The proportion of black teas consumed in England is about 5 to 1; but in the United States of America green tea is greatest.

The duty on tea is still too high. It is certain that an increased consumption would follow a diminution of duty.

(Papers issued by the Chinese and India Association; Part. Papers, No. 1.)

The total export of tea from China to Europe and America exceeds 50,000,000 lbs. Russia is supplied with 6,000,000 lbs. *via* Kiakhta; the United States and America require about 8,000,000 lbs. France about 2,000,000 lbs.; and India imports about 2,800,000 lbs.

TELLERS OF THE EXCHEQUER were the holders of an ancient office, the Exchequer. They were four in number; their duties were to receive payments into the Exchequer on behalf of the king, to give the clerk of the Exchequer (skins or rolls of parchment) a bill or receipt for the money, to pay all the debts according to the warrant of the Exchequer, and to make weekly and monthly books of receipts and payments. The lord treasurer. (4 Inst., 105; *Constitution*, 'Court,' D. 4, 14, 15.) The office was abolished by act of parliament (13 Wm. IV. c. 15), together with the clerk of the peels and the several offices subordinate thereto, and a single officer-general of the receipt and issue of Majesty's Exchequer was appointed to perform the duties of the four. (4 & 5 Wm. IV. c. 15.)

TENANCY. [TENANT.]

TENANCY, JOINT. [TENANTS.]

TENANCY IN COMMON. [TENANTS.]

TATEL.]

TENANCY IN COPARCENARY.
[ESTATE.]

TENANT. Tenants, in the more extended legal sense of the word, are of three kinds, distinguished from each other by the nature of their estates; such as tenants in fee simple, in fee tail, for years, at will, and at sufferance.
[Estate; Tenure.]

TENANT AND LANDLORD. The tenant, in the more limited legal sense, which is also the popular sense, is one who holds land under another, to whom he is bound to pay rent, and who is called his landlord. The word Landlord means not only land itself, but also all things, such as buildings, houses, woods, water, which may be upon it. Any one who has an estate in land, provided he is also in possession, may let the land to another. Where the letting takes place by an express contract between the parties, the contract is called a Lease, the nature of which is explained generally under LEASE. The loss of a lease will destroy the tenancy, provided the various existence and the terms of it can be proved.

As to the relation of landlord and tenant, it may be created otherwise than by a lease. If one man with the consent of another occupies his land, a contract of letting is assumed to have been made between them, and the occupier becomes tenant to the owner. Such contracts are considered to be upon the same footing as if the lands had been let for a year dating from the commencement of their occupation. At the end of the first year, a second year's tenancy begins, unless six months' notice be given to determine the contract, or been given by either party to the other, and so on from year to year. The same rule of law applies to cases where a tenant continues to occupy land after the expiration of a lease made by deed; but in this case all the covenants of the express lease as to payment of rent, repairs, insurance, and the like, are in force unless the lease is cancelled by destroying the deed; and even if there should be a verbal agreement for a different rent, still the old covenants subsist, unless the lease is cancelled. [DEED.]

Besides tenancies for fixed periods, a tenancy may exist at Will and by Sufferance. [ESTATE.] The law as to landlord and tenant generally applies, so far as it is not restricted or varied by the particular circumstances of a contract between the parties, and so far as the circumstances render it applicable, to the case of the lessors and occupiers of lodgings.

In every case where the relation of landlord and tenant exists, either by express or by implied contract, certain terms are implied by law to have been agreed upon by the parties as forming part of the contract. It is of course in the power of the parties, where the contract is express, to qualify these terms so implied by the language of the contract itself. But it may be observed that as these terms are comprehensive in their nature, and distinctly understood in law, the interests of parties are often better consulted by leaving them to the general protection afforded by these implied terms than by attempts to define by enumeration in detail the respective rights and duties of the landlord and tenant. The terms implied on the part of the landlord are, that the tenant shall quietly enjoy the premises without let or hindrance from the landlord; on the part of the tenant, that he will pay rent, keep the premises in repair to a certain extent, as hereafter mentioned, and use the land, &c. in a fair and husbandlike manner.

When the landlord is himself tenant of the premises to a superior landlord, and neglects to pay his rent, and the occupying tenant is called upon to pay it to the superior landlord, he may do so, and set it off against the rent due from him to his own landlord. If a tenant has covenanted without exception or reservation to pay rent during the term for which the lease has been granted to him, he will be bound to pay it even if the premises should be destroyed by fire or other casualty. If he should have assigned his lease to another and ceased to be in possession, he will still remain liable under his covenant to pay rent.

The rules of law as to the repairs of premises may be determined by the terms of the lease. If they are not determined

In agricultural tenancies the lease generally determines the mode in which the farm is to be treated. [LEASE.] Unless also the lease expressly or impliedly excludes the operation of the custom of the country, the tenant is bound to conform to it. The custom of the country means the general practice employed in neighbouring farms of a similar description, with reference to rotation of crops, keeping up fences, and other like matters. In leases of farms it is often the practice to protect the landlord against certain acts of the tenant, such as ploughing up meadow land, &c., by introducing certain provisions into the lease. These provisions may operate according to the phraseology used, either to assign a penalty or to determine the liquidated damages agreed to be paid for the act done. It is often a matter of great importance and of some nicety to determine under which class the provisions fall. If under the first, the landlord is not entitled to the whole penalty upon the act being done, but he can only recover in an action the amount of the actual damage which has accrued. If under the second, he is entitled to the whole amount of the damages agreed on. A covenant by a tenant not to plough up meadow under a penalty of 5*l.* for every acre ploughed, is

cause little or no damage. (Ferard, *On Fictures*.)

The tenant in occupation of premises is, in the first instance, all taxes and rates of every due in respect of the premises party therefore who is authorized them may proceed against the tenant in occupation to recover them. It is generally a matter of agreement between the landlord and tenant that the tenant shall pay all rates and taxes as land tax; and sometimes it is agreed that the landlord shall pay the sewer rates. If, however, the landlord has agreed to pay the tenant the rates and taxes, and he fails to do so, the tenant may deduct the amount from his rent, or bring an action to recover it; but this should be done during the current year, and if it is allowed a considerable time to elapse without claiming a deduction or bringing an action, he will be held to have waived his claim to recover them from the landlord.

Where a fixed rent has been agreed upon, has become due, and is not tendered, the landlord, with certain exceptions, can seize growing crops, kind of stock, goods, or chattels on the premises, or pasturing any animal enjoyed in right of the premises,

ed to the relation of landlord and tenant, as where a tenant disclaims or signs the title of his landlord by acknowledging, for instance, the right of property to be vested in a stranger, or sets a claim to it himself, or by a breach of a condition which is expressly introduced into the lease, the breach of which is to be attended with a forfeiture of the tenancy, as a condition to pay rent on a particular day, to cultivate in a particular manner, &c. To this head may be referred provisions in a lease for re-entry by the landlord on the doing or non-doing of certain acts by the tenant, such as the commission of waste, the failure to repair, &c. The courts are generally to be unfavourable to forfeitures; and, therefore, when the landlord has notice of an act of forfeiture, or an act which entitles him to re-enter, he must immediately proceed in such a way as to show that he intends to avail himself of his legal right. If after the commission of the act he does anything which amounts to a recognition of the tenancy, or if he accepts of rent subsequently, he will have waived his right to re-enter upon the forfeiture.

In a yearly tenancy, where no period of time is agreed on, must be determined by a notice to quit at the expiration of the current year, given six months previously. In the case of lodgings, the time, if less than a year, for which they are taken, will be the time for which a notice is necessary. Thus lodgings taken by the month or week require a month's or week's notice.

The notice to quit need not be in writing, though, from the greater facility of proving it, a written notice is always better. It should distinctly describe the premises, be positive in its announcement of an intention to quit or require possession, be signed by the party giving and served personally upon the party to be affected by it.

If a tenant, after having given notice to quit, continues to occupy, he is liable to pay double rent. If he does so, no notice is necessary. If he continues to occupy after the landlord has given a notice, he is liable to pay double rent for the premises.

666, 11.

At the expiration of the lease, the tenant is bound to deliver up possession of the premises; but if either by special agreement or by the custom of the country the tenant is entitled to the crops still standing on the land, and which are called away-going crops, he may enter for the purpose of gathering them, and also use the barns and stables for the purpose of threshing them. The incoming tenant may also enter during the tenancy of the preceding tenant to plough and prepare the land.

As to the recovery of rent by action see RENT.

If the tenant refuses to deliver the possession of the land, the landlord may bring an action of ejectment to recover it, and the process is simplified by 4 Geo. II. c. 28. [RENT, p. 637.]

By the 11 Geo. II. c. 19, and 57 Geo. III. c. 52, if a tenant, under any lease or agreement, written or verbal, though without a clause of re-entry, of lands at a rack-rent, or rent of three-fourths the yearly value, shall be in arrear for half a year's rent, and shall leave the premises deserted and without sufficient distress, any two justices of the county, at the request of the landlord, may go and visit the premises, and fix on the most conspicuous part of them notice in writing on what day, distant fourteen days at least, they will return again to view the premises; and if on the second day no one appears to pay the rent, and there is no sufficient distress on the premises, the justices may put the landlord into possession, and the lease shall become void. These proceedings are subject to appeal before the judges of assize for the same county at the ensuing assizes.

By 1 & 2 Vict. c. 74, where the interest of any tenant of land, &c., at will, or for a time less than seven years, liable to the payment either of no rent or a rent of less than 20*l.* a year, shall have ended or been duly determined, and the tenant shall refuse to quit, the landlord may serve him with a notice, a form for which is given in the act, to appear before a justice for the county; and if he fails to show satisfactory cause why he should not give up possession, the justices, on proof of the tenancy and of the expiration

of it, may give possession to the landlord. If the landlord was not at the time of the proceedings lawfully entitled to possession, he will be liable to an action of trespass at the suit of the tenant, notwithstanding the act of parliament.

(Woodfall's *Landlord and Tenant*;
Coote's *Landlord and Tenant*.)

TENANT AT SUFFERANCE.

[ESTATE.]

TENANT AT WILL. [ESTATE.]

TENANT FOR LIFE. [ESTATE.]

TENANT FOR YEARS. [ESTATE.]

LEASE.]

TENANT IN FEE SIMPLE. [ESTATE.]

TENANT IN TAIL. [ESTATE.]

TENANT-RIGHT is the name for a species of customary estates peculiar to the northern parts of England, in which border services against Scotland were anciently performed before the political union of the countries. Tenant-right estates were holden of the lord of the manor by payment of certain customary rents and the render of the services above mentioned, are descendible from ancestor to heir according to a customary mode differing in some respects from the rule of descent at common-law, and were not devisable by will either directly or by means of a will and surrender to the use of the same, though they are now made devisable by 1 Vict. c. 26, s. 3. Although these estates appear to have many incidents which do not properly belong to villeinage tenure or copyhold, not being holden at the will of the lord, or by copy of court roll, and being alienable by deed and admittance thereon, it has been determined that they are not freehold, but that they fall under the same general rules as copyhold estates. (*Doe v. Huntingdon*, 4 East, 271.)

TENDER. A tender is the offer to perform some act. In practice it generally consists in an offer to pay money on behalf of a party indebted, or who has done some injury, to the creditor, or to the party injured.

A tender to the amount of 40s. may be in silver; but beyond that amount it must be in gold, or in Bank of England notes payable to bearer on demand for any sum above 5*l*. (3 & 4 Wm. IV. c. 6.)

If a tender be made of a larger sum in silver, or in country bank-notes, no objection be taken at the time silver or notes, the objection to the tender on that ground is waived, and the tender is good to the amount in which made. The money must be paid and shown, or the bag or other which contains it shown to the person to whom it is intended to be given; this is dispensed with by some declaration or act of the creditor. If the creditor insisted upon such strictness even though a party tell his creditor he is about to pay him so much, and put his hand into his pocket to produce money, yet if the creditor leave the presence of the debtor before the money is actually produced, no tender will be made: but if the creditor refuse to receive the money mentioned on the ground that it is insufficient in value, the actual production of it is not necessary to constitute a valid tender, the offer must be absolute and without conditions. An offer of a larger sum with a request of change; an offer of a receipt, or an undertaking that something shall be done on the part of the creditor, are not valid tenders. An offer of a larger sum absolutely without a demand of change is good. A tender may be made either to the person actually entitled to receive it, or to an agent or servant authorised to receive it, or to a managing clerk; and a tender will not be invalidated even though the creditor has refused to receive it, and assigns the reason for doing so. If the attorney write to the debtor demanding the money, a tender afterwards made to him or to his managing clerk is valid unless at the time when it is made the attorney disclaim authority to receive the money. A tender ought to be made on behalf of the party from whom the money is due, if the agent appointed by him to receive the tender offer a larger sum than he is authorised to do, the tender will nevertheless be good for the full amount due, if the tender is made.

If the defendant in an action for

he must state that he has always paid to pay the money, and he must go into court. The effect of the plea is to admit the existence of the contract facts stated in the declaration which form the cause of action in itself. The plea goes only in bar of the action. The plaintiff therefore in such case can never be nonsuited; but if it is taken on the mere fact whether the tender has been made, and that found for the defendant, it is a good plea to the action.

Various statutes, magistrates, officers, &c., are empowered, after notice, to be brought against them, or against the tender, and if the amount tendered is sufficient, the tender is a defence to the action.

TEMENT, in its usual and popular sense, is applied only to houses and buildings; but in its original, proper, and meaning it includes everything of an immovable nature that may be an object of feudal tenure; in general, however, it includes not only land, but every modification of right concerning it.

Thus the word "Libertum tenementum," frank-tenement, or freehold, is applied not only to lands and other objects, but also to offices, rents, &c., and the like. (ESTATE, TENEMENT, &c. Litt., 154, s. 2.)

TENTHS are the tenth part of the value of all ecclesiastical livings. They were formerly claimed by the pope; but a claim was sanctioned, in this respect, by an ordinance in the 20th of Edward I., when a valuation of all such livings was made, in order that the pope should know the amount of his revenue in his country. The possessions afterwards acquired by the church were not to be paid of tenths to the pope, but were continued to be charged according to that valuation. (Coke, 2 Inst., 371.) When the authority of the pope was extinguished at the Reformation,

HENRY VIII. transferred the revenue from tenths to the crown, and had a valuation of all the livings, so as to know the tenth of their true yearly value

at that time. (56 Hen. VIII. c. 3, s. 2-11.) By royal grants under 1 Eliz. c. 19, s. 2, the Archbishop of Canterbury and the Bishop of London were exempted from tenths, and were also authorised to receive the tenths of several benefices as a compensation for certain estates which were alienated from their sees. By the 6 Anne, c. 24, all benefices were discharged from the payment of tenths which, at that time, were under the annual value of 50*l.*, except those of which the tenths had previously been granted by the crown to other parties. There are also some other special exemptions. At the present time, out of 10,498 benefices, with and without cure of souls, there are 4898 which remain liable to tenths. (Parl. Rep. First-Fruits and Tenths, 1837, No. 384.) Queen Anne gave up the revenue arising from tenths, as well as from first-fruits, which had been enjoyed by her predecessors since the Reformation, and by act 2 and 3 of her reign, c. 11, assigned it to the augmentation of poor livings; for which purpose she erected a corporation by letters patent in 1704 to administer the funds, called the Governors of Queen Anne's Bounty. This act declared that episcopal sees and livings not exempted should continue to pay in such rates and proportions only as heretofore, or according to the valuation of Henry VIII., commonly known as the "King's Books." Tenths under the act 1 Vict. c. 26, are collected by the Treasurer of the Governors of Queen Anne's Bounty. Payment is enforced by Exchequer process, when not duly made, and the treasurer is required to give notice of arrears within one month after the proper time of payment. In case of a living being vacated, the Exchequer is empowered by act 26 Hen. VIII. c. 3, s. 18, to recover arrears of tenths, not only from the executors and administrators, but also from the successor of the last incumbent. (2 Burn's Ecclesiastical Law, 9th ed., pp. 273-295.) [BENEFICE; FIRST-FRUIT.]

TENURE. The general nature of tenure and its origin and history in England are explained in the article FEUDAL LAW. A few remarks may be made here on tenure as at present existing. 312

the law of England, for which purpose a short recapitulation is necessary.

All land was and is held of the king either mediately or immediately. All tenures were distributable under two general heads, according as the services were free or base; and consequently there was the general division of tenures into Frank-tenement or free-holding, and Villeinage. The act of Charles II. (12 Car. II. c. 24) abolished military tenures, which were one kind of free services, and changed them into the other species of free services, namely free and common socage. Thus one tenure in socage was established for all lands held by a free tenure, which comprehended all lands held of the king or others, and all tenures except tenures in frankalmoigne, copyhold, and the honorary services of grand-serjeanty; and it was enacted by the same act that all tenures which should be created by the king in future, should be in free and common socage. It is particularly provided in the act which abolishes military tenures, that it shall not alter or change any tenure by copy of court-roll, or any services incident thereto, nor take away the honorary services of grand-serjeanty, other than charges incident to tenure by knights' service.

Thus it appears that tenure is still a fundamental principle of the law relating to land in England.

All land in England which is in the hands of any layman is held of some lord, to whom the holder or tenant owes some service. It is by doing this service that the tenant is entitled to hold the land: his duty is a service, and the right of the lord is a *Seignory*. The word tenure comprehends the notion of this duty and of this right, and also the land in respect of which the duty is due: the land is a *Tenement*. As already observed, all land is held either mediately or immediately of the king; and ultimately all land is held of the king. He who is the owner of land in fee simple, which is the largest estate that a man can have in land, is not absolute owner: he owes services in respect of his fee (or *fee*), and the seignory of the lord always subsists. This seignory is now of less value than it was, but still it subsists.

The nature of the old feud was this: tenant had the use of the land, but ownership remained in the lord; this is still the case. The owner of it has in fact a more profitable estate, he once had; but he still owes service, fealty at least, and the ownership of land is really in the lord and ultimately in the king. For all practical purposes the owner's power of enjoyment is complete as if his land were allodial: the circumstance of its not being allodial has several important practical consequences.

No land in England can be without an owner. If the last owner of the land died without heirs, and without disposing of his fee by will, the lord takes it by virtue of his seignory. If it is aliened to a person who has a capacity to acquire but not to hold land in England, the king takes the land; this happens in the case of lands being sold to an alien. If a man commits treason, his fee lands are liable to be forfeited to the king, and his copyhold estates to the lord of the manor, in the form and under the limitations and conditions explained in *LAW, CRIMINAL*, p. 183. If a man commits a felony, his freehold and copyhold lands are subject to forfeiture in the manner stated in *LAW, CRIMINAL*. These forfeitures are consequences of tenure.

The case of church lands seems a thing peculiar. They are held by the lord though no temporal services are due. This is the tenure in frankalmoigne which is explained under *FRANKALMOIGNE*.

Tenure in frankalmoigne is exactly what it was before the time when Charles II. was passed. Church lands, which are held in frankalmoigne, owe no temporal services, but the spiritual services, and the lord of the land they are held must be considered as the owner. And this conclusion is consistent with and part of the law of tenures, which no land in England is ever without an owner. Church land differs from land held by laymen in this, that beneficial ownership can never be in the lord, for all spiritual persons, the nature of corporations, and

the corporation sole (as he is an odd contradiction in terms) set, and it is the duty and right of the person to name a successor, stated by Blackstone (i. 470) law has wisely ordained that a *quiescens* parson, shall never more than the king, by making a successor a corporation; by all the original rights of the are preserved entire to the for the present incumbent and those who lived seven centuries law one and the same person." Understanding this ingenious mistake one man, together with ascertained, a corporation, a *mens* one juristical person of more than one natural difficulty really is, that when there is no person who has seigniorship of the land until a successor, if Blackstone's theory the comparison of the case of a that of the king is made, for or to a deceased king is ascertained the death of his predecessor; successor of a parson is generally by the will of some other exercised, and till the person to appoint a parson has, and he has been duly instituted, the church have no, unless the lord is the owner. ory may be worth nothing, but is. The difficulty may indeed without the supposition of a ill existing, and in the following. There is succession in the parson succeeding another, the notion of a corporation is ery. The notion of succession right which is the object of sion, continues the same; the at is the person, changes. In constitute strict succession, the ship or right must begin at the when the former ceases, and the ship or right is derived from ed on a former ownership or is is the case of succession to, and also of the heir-at-law to real property. In the case, when a new one is appointed, by a *fiction at law* commences

at the time when his predecessor's right ceased, though an interval has elapsed between the time of his predecessor's death and his own appointment; and this was the doctrine which the Romans applied to the case of a heres who did not take possession of the hereditas till some time after the death of the testator or intestate. This subject is discussed by Savigny, *System des Römischen Rechts*, &c., vol. iii. When then the parson dies, the freehold may, according to this doctrine, be considered to be in abeyance till the appointment of his successor, one of the few instances in the English law in which it is said that a freehold estate can be in abeyance.

No seignory, in the sense above explained, can now be created except by the king. It was enacted by the statute *Quia Emptores* (18 Edw. I. c. 1), that all feoffments of land in fee simple must be so made that the feoffee must hold of the chief, that is, the immediate lord of the aliening tenant, by the same services by which the tenant held. All seignories exist now which existed at the time when the statute of *Quia Emptores* was passed. A lord may release the services to a tenant; but it would be consistent that the king could not release the services due to him, for if that were the case land might become allodial, and on the death of a person without heirs there might be land without an owner, which is inconsistent with the fundamental principles of law relating to English land. Still it is said that the king can release to his tenant all services, and yet that the tenant holds of him. By this assumption of a still subsisting tenure the consequence above mentioned is avoided.

Tenure of an imperfect kind may be created at present. Wherever a particular estate is created, it is held of the reversioner by an imperfect tenure; this is the common case of landlord and tenant. If no rent or other services are reserved from the tenant of the particular estate for life or years, the tenure is by fealty only, and he may be required to take the oath of fealty. But the right of the reversioner to whom services are due is solely incident to the reversion, and is created at the same time with it.

The perfect tenure originated in the pure feudal system, in which the seignory of the lord was the legal ownership of the land, and the tenant owed his services for the enjoyment of it. The only perfect tenure now existing is Socage tenure, the services of which are certain, and consist, besides fealty, of some certain annual rent. [SOCAGE.]

The right of wardship was one of the incidents to military tenures. The lord had a right to the wardship of his infant tenant until he was twenty-one years of age; and this right was in many respects prejudicial to the interests of the heir. This right was abolished with the abolition of military tenures. The right of guardianship to an infant tenant in socage only continues to the age of fourteen; but the act of Charles II. (12, c. 24) gave a father power by deed or will, executed as the statute prescribes, to appoint a guardian to any of his children till their full age of twenty-one, or for any less time. (See 1 Vict. c. 26.) The guardian in socage was the next of kin to the heir, and he was chosen from that line, whether paternal or maternal, from which the lands had not descended to the heir, and consequently such guardian could never be the heir of the infant. This wardship then had no relation to tenure.

If the services due in respect of a perfect tenure are not rendered by the tenant to the lord, he may distrain, that is, take any chattels that are on the land in respect of which the services are due; and an imperfect tenure so far resembles a perfect one, that a reversioner can distrain for the services due from the tenant of the particular estate.

A right still incident to a seignory such as a subject may have is that of escheat, which happens when the tenant in fee simple dies without leaving any heir to the land, and without having incurred any forfeiture to the crown, as for treason. Such a right exists by virtue of a seignory created before the statute of Quia Emptores. It has been observed that the acquisition by escheat is not a purchase, because the escheated land descends as the seignory would have descended. Forfeiture is another right

incident to a seignory, and it may happen in consequence of any act by which the tenant breaks his fidelity (fealty) to his lord of whom he holds. It therefore extends to other cases than treason and felony. This subject is explained under FORFEITURE, and TENANT AND LANDLORD. When lands are forfeited to the king for treason, or to the lord by felony, the tenure is extinguished; and generally, in whatever way lands come to the king or lord, the tenure is of necessity extinguished. If lands escheat to the king, he may grant them again in fee simple.

The nature of tenure will be better understood by consulting the following articles: COPYHOLD; FEUDAL SYSTEM; MANOR; RENT.

TERM. The law Terms are those portions of the year during which the courts of common law sit for the despatch of business. They are four in number and are called Hilary Term, Easter Term, Trinity Term, and Michaelmas Term; they take their names from those festivals of the Church which immediately precede the commencement of each. Various acts of parliament have been passed relative to the regulation of the Terms. The statute which now determines them is the 11 Geo. IV. & 1 Wm. IV. c. 7, amended by 1 Wm. IV. c. 3, which enacts that Hilary Term shall begin on the 11th and end on the 31st of January; Easter begin on the 15th of April and end on the 8th of May; Trinity begin on the 22nd of May and end on the 12th of June; Michaelmas begin on the 2nd and end on the 25th of November. Monday is in all cases substituted for Sunday when the first day of Term falls on Sunday. During Term four judges sit in each court, and are occupied in deciding points of law only, without the intervention of a jury. The fifth judge in each court sometimes sits alone to determine matters of smaller importance as to equity causes at Nisi Prius. By the statute 1 & 2 Vict. c. 32, the courts of common law are empowered, upon giving notice, to hold sittings out of Term for the purpose of disposing of the business then pending and undischarged before them. These sittings are called

in manner as those during the sept that no new business is to be done. The period during which the power to do this is reserved "such times as are now by statute for holding sittings at Nisi Prius in London and Westminster." Judges are appointed by 1 Wm. IV. and consist of "not more than six days, exclusive of Sundays, Hilary, Trinity, and Michaelmas, not more than six days, exclusive of Sundays, after any Easter be reckoned consecutively after the same." The judges are also empowered the same session to appoint for days as they shall think fit at bar (that is, a trial before the court), and the time so, if in vacation, is for the purpose of being deemed a part of the Term.

There is also a provision which enables the court, with the consent of the parties, to sit any time not within the six days for the trial of any Nisi Prius. The sittings during the four and six days are called the first Term, and are held for the trial of causes at Nisi Prius for London and Westminster, which places are part of any of the circuits. The second Term is also held for the purpose before single judges in each term time, but no special jury trial within the Term. (*Spelman's Terms*; 3 Blackstone's Com.,

quently placed in the parish chest. If a terrier is proved to be produced from the proper custody, and therefore may be presumed to be genuine, it is in all instances evidence against the parson. In those instances where it has been signed by churchwardens elected by the parish or by the inhabitants, it is also evidence against the inhabitants generally; even against those occupying lands other than the lands occupied by the inhabitants who signed it. The questions in respect of which a terrier is generally employed as evidence are those relating to the glebe, tithes, a modus, &c. (Starkie, *On Evidence*.)

TEST ACT. (ESTABLISHED CHURCH; NONCONFORMITY.)

TESTAMENT. [WILL.]

TESTE OF A WRIT. [WRIT.]

TESTIMONY. [EVIDENCE.]

THEATRE. Before the reign of Elizabeth theatrical representations appear to have been subject to no legal restraint beyond the liability of those who conducted them to the vagrant laws.

But, although players, as such, were subject to no general legal restrictions, it is probable that the practice of granting licences from the crown to such persons prevailed as early as the reign of Henry VIII. The earliest theatrical licence from the crown now extant is that granted by Queen Elizabeth, in 1574, to James Burbage and four other persons, "servants to the Earl of Leicester," which contains a proviso that the performers thereby authorized, before they are publicly represented, shall be seen and allowed by the queen's master of the revels; a stipulation analogous to the licence of the lord chamberlain under the Licensing Act at the present day. These licences from the crown were originally nothing more than authorities to itinerate, which exempted strolling players from being molested by proceedings taken under the laws or proclamations against vagrants, and also superseded the necessity of licences from local magistrates.

Although theatrical representations became much more general in the reigns of James I. and Charles I., no laws were enacted for their regulation, with the exception of the stat. 11 Car. I. c. 1, which

OF YEARS signifies the severest which pass to the person whose estate for years is granted by the lord of the fee. [LEASE.]

TERRIER, from the French word land-book, a register or survey. These last known in this country ecclesiastical terriers made provisions of the 87th canon, consist of a detail of the temporal estate of the church in the parish. It is to be signed by the parson, sometimes also signed by the vicar and some of the inhabitants of the parish. Their use of custody is the bishop's or archbishop's registry; a copy also is frequently

who should for hire, gain, or reward, act, represent, or perform any play or other entertainment of the stage, or any part therein, if he shall not have any legal settlement where the offence should be committed, without authority by patent from the king, or licence from the lord chamberlain, should be deemed a rogue and vagabond within the stat. 12 Ann." This provision is now repealed by the stat. 5 Geo. IV. c. 83, and players as such, whether stationary or itinerant, are, at the present day, not amenable to the law as rogues and vagabonds. By the 2nd section of the above statute, 10 Geo. II. c. 28, which, with the exceptions just mentioned, is still in full operation, and forms the law of the metropolitan theatres, it is enacted generally, that "every person who shall, without a patent or licence, act or perform any entertainment of the stage for hire, gain, or reward, shall forfeit the sum of 50*l*." By the 3rd section it is declared, that "no person shall for hire, gain, or reward act, perform, or represent any new interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any parts therein; or any new act, scene, or other part added to any old interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any

Britain, except in the city of London, and within the liberties thereof, or in such places where the king shall personally reside, and during such residence only." The 7th section enacts, that any interlude, tragedy, comedy, or play, farce, or other entertainment of the stage, or any act, scene, or part thereof shall be acted, represented, or performed in any house or place where wine, beer, or other liquors shall be sold or retailed, the same shall be deemed acted, represented, and performed for gain, hire, and reward." Within 10 years after the passing of this act of parliament, the clause which restricted the power of granting patents by the king to theatres within the city of Westminster and places of royal residence, found to be productive of inconvenience, and special acts of parliament were passed, which exempted several large towns from the operation of that clause, which authorized the king to grant letters patent for establishing theatres in such places. Statutes of this kind have since been passed with respect to Bath, in the stat. 3 Geo. III. c. 10; with respect to Liverpool, in the stat. 11 Geo. III. c. 16; and with respect to Bristol, in the stat. 18 Geo. III. c. 1. A further relaxation of the re-

d theatres in Westminster, or as is submitted to the Lord Chamberlain within 20 miles of London, or 10 miles of Edinburgh, or 8 miles distant or licensed theatres, or 10 of the king's residence, or 14 miles of the universities of Oxford or of 2 miles of the outward any place having pecuniary jurisdic-

tion imposed by the stat. 10 c. 22, being found in practice to prevent the performance of entertainments without license, it is being alleged to follow that of the lower orders in London entertainments, the legislature, in 1859, gave additional powers of police for their prevention the 46th section of the stat. 2 c. 47, "the commissioners of the police are authorized to consent, with such constables as be it necessary, to enter into any room, kept or used within the police district for stage dramatic entertainments, into which is obtained by payment, and which is not a licensed theatre, to take into custody all persons found therein without cause." The same clause enacts "any person keeping, using, or letting any house or other for the purpose of being used as a theatre, shall be liable to a fine of 20*l.*, or, in the discretion of the court, may be committed to the gaol for three months; and any person performing or being present at any theatrical entertainment without lawful excuse shall be liable to a fine of forty shillings."

2 & 3 Wm. IV. c. 15, and it also, regulate property in amusements. [Corbett, p.

T. [LAW, CRIMINAL.]

ROMAN CODE. [CONSTITUTION, p. 621.]

TYNNE ARTICLES. [ECCLESIASTICAL.]

WRITING LETTERS. [LAW, p. 194.]

TIMBER TRADE. [TAX, TAXATION.]

TIN TRADE. [MINES.]

TITHES are the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants, and are offerings payable to the church, by law. Under the Jewish system, the tenth part of the yearly increase of their goods was due to the priests. (*Numbers* xviii. 21; *Deut.* xiv. 22; *Levit.* xxvii. 30, 32.)

In the earliest ages of the Christian church, offerings were made by its members at the altar, at collections, and in other ways; and such payments were enjoined by doctors of the church, and sanctioned by general usage. For many centuries, however, they were voluntary. But when the church had increased in power, and began to number amongst its members many who adhered to it because it was the prevailing religion, it was found necessary to enforce certain fixed contributions for the support of the ministers of religion. The church relied upon the example of the Jews, and claimed a tenth. Meanwhile, the conversion of temporal princes to Christianity, and their zeal in favour of their new faith, enabled the church to obtain the enactment of laws to compel the payment of tithes. In England, the first instance of a law for the offering of tithes was that of Offa, king of Mercia, towards the end of the eighth century. He first gave the church a civil right in tithes, and enabled the clergy to recover them as their legal due. The law of Offa was at a later period extended to the whole of England by King Ethelwulf. (*Prideaux, On Tithes*, 167.)

At first, though every man was obliged to pay tithes, the particular church or monastery to which they should be paid appears to have been left to his own option. In the year 1200, however, Pope Innocent III. directed a decretal epistle to the archbishop of Canterbury, in which he enjoined the payment of tithes to the persons of the respective parishes. This parochial appropriation of tithes has ever since been the law of England. (*Coke*, 2 *Inst.*, 61.)

The tithes thus payable were of three kinds—*predial*, *mixed*, and *personal*. *Predial* tithes are such as arise immediately from the ground, as grain of all sorts, fruits, and herbs. *Mixed* tithes arise from things nourished by the earth, as colts, calves, pigs, lambs, chickens, milk, cheese, and eggs. *Personal* tithes are paid from the profits arising from the labour and industry of men engaged in trades or other occupations; being the tenth part of the clear gain, after deducting all charges. (Watson, *On Tithes*, c. 49.) It is sometimes stated that personal tithes seem to have been generally commuted for the more moderate tribute of Easter Offerings; unless in fishing-towns, or other places where peculiar circumstances have caused a continuance of the primitive usages. (Burton, *Compend. of the Law of Real Property*, § 1173.)

Tithes are further divided into *great* and *small*. The *great* tithes consist of corn, hay, wood, &c.; the *small* tithes consist of the *predial* tithes of other kinds, together with *mixed* and *personal* tithes. This distinction is arbitrary, and not dependent upon the relative value of the different kinds of tithes within a particular parish. Potatoes, for instance, grown in fields, have been adjudged to be small tithes, in whatever quantities planted (Smith v. Wyatt, 2 Atk., 364), while corn and hay in the smallest portions still continue to be treated as great tithes. The distinction is of material consequence, as great tithes belong, of right, to the rector of the parish, and small tithes to the vicar.

No tithes are paid for quarries or mines, because their products are not the increase, but are part of the substance of the earth. There may, however, be tithes of minerals by custom. Neither are houses, considered separately from the soil, chargeable, as having no annual increase. By the common law of England no tithes are due for wild animals such as fish, game, &c.; but there are local customs by which tithes have been paid from such things from time immemorial, and in those places such customary tithes may be exacted. Tame animals, kept for pleasure or curiosity, are also exempt from tithes.

Tithes were originally paid in kind, that is, the tenth wheat-sheaf, the tenth lamb or pig, as the case might be, belonged to the parson of the parish as his tithes. The inconvenience and variety of such a mode of payment are obvious, but no attempt had been made in this country, till very recently, to introduce a general improvement in the mode of collection. The inconvenience of paying tithes in kind must long since have been felt, and certain modes of obviating it were occasionally practised. Sometimes the owner of land would enter into a composition with the parson or vicar, with the consent of the ordinary and the patron of the living, by which certain land should be altogether discharged from tithes, on conveying other land for the use of the church, or making compensation. In other words, the owner of the land purchased an exemption from tithes, such arrangements between landowners and the church were recognised by law; but it was found that they were often injurious to the church by reason of an insufficient value being given for the tithes. The act 1 Elizabeth, c. 19, and 13 Elizabeth, c. 10, were accordingly passed, which disabled archbishops, bishops, colleges, deans, chapters, hospitals, parsons, and vicars, from making any alienation of their property for a longer term than twenty-one years or three lives. In order to establish an exemption from tithes on the ground of a real composition, it is therefore necessary to show that such composition had entered into before the statutes of Elizabeth. Since that time compositions have rarely been made, except under the authority of private acts of parliament.

Another method of avoiding the payment of tithes in kind was by a *decimandi*, commonly called a *modus*. This consists of any custom in a particular place, by which the mode of collecting tithes has been altered by some special manner of doing. In some parishes the custom has prevailed, time out of mind, of paying a certain sum of money annually for ever of land, in lieu of tithes. In other smaller quantity of produce is given, the residue is made up in labour, as 12th sheaf of wheat instead of the

or be housed or threshed by the payer.

A large portion of the land of England and Wales is tithe-free from various causes. Some has been exempted under composition, as already explained, some by prescription, which supposes a composition to have been formed.

The most frequent ground of exemption is that the land once belonged to a religious house, and was there discharged in following manner:—All

abbots, priors, and other heads of religious houses, originally paid tithes from the lands belonging to them, until Pope

Gregory II. exempted all spiritual persons paying tithes of lands which were their own hands. This general discharge continued till the time of King

Henry II., when Pope Adrian IV. renewed it to the three religious orders of Cistercians, Templars, and Hospitalers,

from Pope Innocent III. added the Carthusians. These four orders, exempted by their exemption, were

only called the privileged orders. The Council of Lateran, in 1215, further renewed this exemption to lands in the

possession of those religious orders of which they were in possession before that

time. Bulls were, however, obtained discharging particular monasteries from the payment of tithes, which would

otherwise have been exempt; by which means much land has been ever

tithe-free. Another mode by which lands belonging to religious houses became

liable to the payment of tithes was that of *unity of possession*; as the lands and the rectory belonged to

the same establishment, which would, of course, pay tithes to itself. Yet

lands were not absolutely discharged from unity of possession, for, upon any

change, the payment of tithes was renewed, so that the union only suspended the payment. The act 31 Hen. VIII. c.

13 dissolved several of the religious houses, continued the discharge of lands from tithes, though in the

possession of the king or any other person, grant from the crown; and, in the absence of this, the lands of many

monasteries, which were granted by the crown, are tithe-free, and the right to

tithe and the property in many rectories are vested in laymen. Many monasteries had previously been dissolved by act of parliament, but as no such clause as that contained in the 31 Hen. VIII. had been introduced into other acts, the lands of the monasteries dissolved by them became chargeable with tithes.

We have stated enough concerning the nature of tithes and the various circumstances affecting them, to show how complicated must be the laws, and how entangled the interests of different parties

who had to pay or to receive them. The payment of tithes in kind has been a cause of constant dispute between

clergymen and their parishioners. With the best intentions on both sides, the very nature of tithes is such, that doubts and

difficulties must arise between them; and even where there is no doubt, the form and principle of payment are odious and

discouraging. The hardships and injustice of tithes upon the agriculturist are well described by Dr. Paley:—"Agriculture

is discouraged by every constitution of landed property which lets in those who have no concern in the improvement to a

participation of the profit; of all institutions which are in this way adverse to cultivation and improvement, none is so

noxious as that of tithes. A claimant here enters into the produce who contributed no assistance whatever to the

production. When years perhaps of care and toil have matured an improvement; when the husbandman sees new crops

ripening to his skill and industry; the moment he is ready to put his sickle to the grain, he finds himself compelled

to divide his harvest with a stranger." (*Moral and Political Philosophy*, chapter xii.)

If tithes then be in principle an injurious and restrictive tax upon agriculture, and if the mode of collection be vexatious, it became the duty of a legislature to

provide a remedy for these evils. But tithes are unlike any other tax, which being found injurious to the state, may be

removed on providing others. They are not the property of the state; they are payable not only to spiritual persons, but

to lay impropriators; they have been the subject of innumerable private bargains;

and the law has been so often altered, that it is now impossible to ascertain the

land has been sold at a higher price on account of its exemption from tithe; the value of the patronage of the greater portion of the livings of this country is dependent upon the existing liability of land to tithes; in short, the various relations of society have been for centuries so closely connected with the receipt and payment of tithes, that to have abolished them would have been injustice to many, and no advantage to the community; for the whole profit would immediately have been enjoyed by those whose lands were discharged from payments to which they had always been liable, and subject to which they had most probably been purchased.

As for these reasons the extinction of tithes was impracticable, a commutation of them has been attempted and has been found most successful. Dr. Paley, who saw so clearly the evils of tithes, himself suggested this improvement. "No measure of such extensive concern appears to me so practicable, nor any single alteration so beneficial, as the conversion of tithes into *corn-rents*. This commutation, I am convinced, might be so adjusted as to secure to the tithe-holder a complete and perpetual equivalent for his interest, and to leave to industry its full operation and entire reward." (*Moral and Political Philosophy*, chapter xli.) This principle of commutation was first proposed to be applied by the legislature to Ireland. In addition to the common evils of a tithe system, that country was labouring under another. The mass of the people, who are Roman Catholics, were paying tithes to a Protestant clergy. Resistance to the payment of tithes had become so general that a commutation was deemed absolutely necessary for the safety of the church of Ireland. It was recommended by committees of both houses of parliament in 1839, but not finally carried into effect until 1838.

The statutes for the general commutation of tithes in England are the 6 & 7 Will. IV. c. 71, the 7 Will. IV. and 1 Vict. c. 69, the 1 & 2 Vict. c. 64, the 2 & 3 Vict. c. 32, and the 5 & 6 Vict. c. 54. Their object is to substitute a *rent-charge, payable in money*, but in amount *varying according to the average price of*

corn for seven preceding years, for a tithe, whether payable under a *modus* composition, or not. A voluntary agreement between the owners of the land and the tithe was first promoted, and in case of no such agreement, a compulsory commutation was to be offered by commissioners. In case of dispute, *perpetual* was made for the valuation and appointment of tithe in every parish. The rent-charge was to be thus calculated: A comptroller of corn returns is required to publish in January the average price of an imperial bushel of British wheat, barley, and oats, computed from the weekly averages of the corn sold during seven preceding years. The rent-charge is to be of the value of a number of imperial bushels and parts of an imperial bushel of wheat, barley, and oats, as the same would be purchased at the prices so ascertained and published, in case one-third of such charge had been invested in the purchase of wheat, one-third in barley, and remainder in oats. For example, if the value of the tithe of a parish to be settled by agreement or by law 300*l.*, and that the average price of corn for the seven preceding years had 10*s.* a bushel, of barley 5*s.*, and of oats 2*s.* 6*d.*; the 300*l.* would then rent 200 bushels of wheat, 400 bushels of barley, and 800 bushels of oats. However much the average prices of corn fluctuate in future years, a sum of value to the same number of bushels of each description of corn, according to such average prices, will be payable to the tithe-owner, and not an uncertainty of 300*l.* The quantity of corn is not the money payment to the owner varies with the septennial average price of corn. Land not exceeding 50 acres may also be given by a parson in account of any spiritual benefice or rectory, as a commutation for tithes to secular persons, but not to lay proprietors. (6 & 7 Will. IV. c. 71, s. 2.)

By the last Report (1845) of the commissioners, it appears that all voluntary proceedings have ceased in 9594 tithe districts; 6904 agree-
ments have been received, of which 4614 have been confirmed; 4545 widows for an

is issued; 3324 drafts of orders have been received,

have been confirmed; orders have been received, have been confirmed. Of means of assigning rent-partioning them, about all.

and final commutation of regarded as a most valuable perfectly fair to all parties, d to add security and per property of the church, all grounds of discord and in the clergy and their or must we omit to mention t in the mode of recovering nt upon the commutation. nerly various modes of re- clesiastical as well as in the before justices of the peace, t leading to unseemly liti- rent mode of recovering t, if in arrear, is by dis- upon the tenant or occu- ne manner as a landlord at; and if the rent-charge in forty days in arrear, he land may be given to the rent-charge until the ts are satisfied. Indeed, sciple of the Tithe Com- is to strip tithes of the a tax, and to assimilate is possible to a rent-charge

[SHIRE.]

OF HONOUR are designa- tain persons are entitled sequence of possessing cer- or stations. They vary responding to the variety s. Thus Emperor, King, are titles of honour, and of these dignities are, by nt, entitled to be so deno- to be addressed by such Majesty and Your Royal ese are the terms used in the phrases in use in other rops do not much differ

ers of nobility in England ed by the respective titles uils, Earl, Viscount, and

Baron; and the persons in whom the dignity of the peerage inheres are entitled to be designated by these words; and if in any legal proceedings they should be otherwise designated, there would be a misnomer by which the proceedings would be vitiated, just as when a private person is wrongly described in an indictment; that is, the law or the custom of the realm guarantees to them the possession of these terms of honour, as it does of the dignities to which they correspond.

The orders of nobility in other European countries differ little from our own. They have their Dukes, Marquises, Counts, Viscounts, and Barons.

Another dignity which brings with it the right to a title of honour is that of knighthood. [KNIGHT.] The Baronet, which is a new dignity, originated in the reign of James I. [BARONET.]

Besides these, there are the ecclesiastical dignities of Bishop and Archbishop, which bring with them the right to certain titles of honour besides the phrases by which the dignity itself is designated. And custom seems to have sanctioned the claim of the persons who possess inferior dignities in the church to certain honourable titles, and it is usual to bestow on all persons who are admitted into the clerical order the title of Reverend, a title which was formerly given to others quite as appropriately, to judges for instance.

There are also academical distinctions which are of the nature of titles of honour, although they are not usually considered to fall under the denomination. Municipal offices have also titles accompanying them; and in the law there are eminent offices the names of which become titles of honour to the possessors of them, and which bring with them the right to certain terms of distinction.

All titles of honour appear to have been originally names of office. The earl in England had in former ages substantial duties to perform in his county, as the sheriff (the Vice-Comes or Vice-Earl) has now; but the name has remained now that the peculiar duties are gone, and so it is with respect to other dignities.

Some of these dignities and the titles correspondent to them are hereditary. So were the eminent offices which they

designate in the remote ages, when there were duties to be performed. Hence hereditary titles.

The distinction which the possession of titles of honour gives in society has always made them objects of ambition. Such titles exist even in democratical states, as in the United States of North America; but they are only temporary and annexed to certain offices, as that of President. The hereditary nature of most of the chief titles of honour in European states gives them a different character.

Whoever wishes to study this subject will do well to resort to two great works; one, the late 'Reports of the Lords' Committees on the dignity of the Peerage;' the other, the large treatise on 'Titles of Honour,' by the learned Selden. The latter was first printed in 4to., 1614; again, with large additions, folio, 1631.

TOBACCO. The tobacco duty yields a gross revenue of above 3,500,000*l.* a year; only two articles of foreign production, sugar and tea, bring in a larger sum. Since 1842 the duty has been 3*s.* per lb. The value of the article in bond varies from 2½*d.* to 6*d.* From 1815 to 1825 the duty was 4*s.* the lb. In 1825 it was reduced to 3*s.* the lb. and 2*s.* 9*d.* if it was the produce of the British possessions in America. In 1842 the duty was made 3*s.* also on tobacco produced in the British possessions in America. In 1786 the duty in Great Britain was only 10*d.* per lb.; but in the following year it was increased to 1*s.* 3*d.*; in 1796 to 1*s.* 7*d.*; and it was successively increased at different times until it amounted to 4*s.* in 1815.

For the following years the consumption of tobacco and the population for each decennial were:—

	Population.	Consumption.	Duty per lb.
1801	10,942,646	15,514,998 lbs.	1 <i>s.</i> 7 <i>d.</i>
1811	12,609,864	14,923,243	2 <i>s.</i> 8 <i>d.</i>
1821	14,391,631	12,983,198	4 <i>s.</i>
1831	16,239,318	16,356,018	3 <i>s.</i>
1841	18,335,786	16,000,000	3 <i>s.</i>

It appears that the consumption in 1841 was considerably less than one lb. per head: in Prussia it is three lbs. It is impossible to believe that the use of tobacco has declined, or even been station-

ary, within the last few years; there is little doubt indeed of its having increased, though the returns give a different result. In 1828 only 8600 lbs. of cigars paid duty at 18*s.* the lb.; in 1831, the duty having been reduced one-half, 66,000 lbs. were entered for consumption; and in 1841 there were entered 213,613 lbs. The following account shows the quantities of unmanufactured tobacco on which duty was paid in the United Kingdom in the three years and a half ending July, 1842:—

England, 1839,	15,686,245 lbs.
1840,	15,475,431 lbs.
1841,	14,990,129 lbs.
half-year ending 5th July, 1842,	7,183,140 lbs.
Scotland, 1839,	2,082,469 lbs.
1840,	2,071,350 lbs.
1841,	2,031,862 lbs.
half-year ending 5th July, 1842,	1,042,257 lbs.
Ireland, 1839,	692,780 lbs.
1840,	5,355,617 lbs.
1841,	5,473,437 lbs.
half-year ending 5th July, 1842,	2,663,522 lbs.
United Kingdom, 1839,	22,971,406 lbs.
1840,	22,902,396 lbs.
1841,	22,095,588 lbs.
half-year ending 5th July, 1842,	10,827,710 lbs.

The following are the quantities retained for home consumption and the amount of duty received in 1843 and 1844:—

	1843.	1844.
Unmanufactured tobacco	22,361,330 lbs.	23,347,330 lbs.
Manufactured, or cigars	248,514	258,378
Net amount of duty received	£5,525,263	£3,710,641

There is both smuggling and extensive adulteration of tobacco; an act was passed (5 & 6 Victoria, c. 93) intended to remedy one of the sources of loss to the revenue, by again subjecting the manufacturers and dealers to the supervision of the excise. Up to 1825 both a customs and excise duty was collected on tobacco; but since that year the duty has been wholly collected by the officers of the customs at the ports of importation. A strict survey of the manufacturers' premises, and a registry of their operations and the sale of the retail dealers, were still kept up by the excise, though they no longer collected any duty. This survey was at length abolished in 1840 by the 3 & 4 Vict. c. 18: it is now partially re-

nature of the adulations
be gathered from one of
the Act 5 & 6 Vict., which
is a penalty of 200*l.*, impos-
ing in their possession "any
wine, or honey, or any
sorts of malt, or any ground
oasted grain, ground or un-
y, lime, sand (not being to-
bacco, ocher, or other earths,
sand or powdered, wood,
ls, or any leaves, or any
s (not being tobacco leaves
entirely, nor any substance
sap, liquid, or preparation,
eg, to be used or expelle
d as a substitute for or
be weight of tobacco or

TION ACT. [Russo-

on the Russian "tolus," in
"called in Law Latin "telo-
ludum," and "toludum,"
for variations, which may
beverage, all which Latin
and apparently from varia-
on of tribute or revenue";
is money or in kind, fixed
into either under a royal
r a prescriptive usage from
istence of such a grant is
sideration of some service
eft conferred, or right for-
served by the party who
uch payment.

of land may in general
own existing it either per-
is their cattle or goods, by
es against trespassers, or
is cattle or goods. There
of be resorted to where the
land has acquired in its
a public way; but in such
have been a royal grant,
party to demand a reason-
ation for the accommoda-
d-trespassers.

operation, or the owner of
de, has immemorially re-
ents or walls of a town, or
and, in consideration of the
repair, has immemorially
the reasonable sums in re-
as, cattle, or goods passing

through the town, such sums are re-
coverable at law by the owner of toll-
through.

An ancient toll may be claimed by the
owner of a port in respect of goods shipped
or landed there. Such tolls are port-dues,
more commonly called port-dues. The
place at which these tolls were set or
assessed was anciently called the Tolsey,
where, as at the modern Exchange, the
merchants usually assembled, and where
commercial courts were held.

Another species of toll is a reasonable
fixed sum payable by royal grant or
prescription to the owner of a fair or
market, from the buyer of tollable articles
sold there. The benefit which forms the
consideration of this toll is said to be the
security afforded by the attestation of the
sale by the owner of the fair or market,
or his officers. It is not due unless the
article be brought in bulk into the fair or
market. Where, however, the proper and
usual course has been to bring the bulk into
the fair or market, the owner of the fair or
market may maintain an action against a
party who sells by sample, in order to de-
prive him of his toll. In some cases, by
ancient custom, a payment, called turn-
toll, is demandable for beasts which are
driven to the market and return unsold.
The term toll is sometimes extended to the
compensation paid for the use of the soil
by those who erect stalls in the fair or
market, or for the liberty of picking holes
for the purpose of temporary erections;
but the former payment is more properly
called stallage, and the latter pikeage; and
if the franchise of the fair or market, and
the ownership of the soil on which it is
held, come into different hands, the stall-
age and pikeage go to the owner of the
soil, while the tolls, properly so called,
are annexed to the franchise.

If tolls are wrongfully withheld, the
party entitled may recover the amount
by action as for debt, or upon an im-
plied promise of payment; or he may
seize and detain the whole or any part of
the property in respect of which the toll
is payable, by way of distress for such
toll. If excessive toll be taken by the
lord, or with his knowledge and consent,
the franchise shall be which: & without
such consent, the officers shall pay double

damages and suffer imprisonment. (Stat. 3 Edw. I. c. 31.)

Grants of tolls were formerly of very ordinary occurrence. But it seems to be very probable that many ancient payments of this description, though presumed, from their being so long acquiesced in, to have a lawful origin under a royal grant, were in fact mere encroachments. The evil was, however, practically lessened by the exertion of the royal prerogative of granting immunities and exemptions from liability to the payment of tolls, either in particular districts or throughout the realm; a prerogative exercised also by inferior lords who possessed *jura regalia*.

The term "toll" is used in modern acts of parliament to designate the payment directed to be made to the proprietors of canals and railways, the trustees of turnpike-roads or bridges, &c., in respect of the passage of passengers or the conveyance of cattle or goods.

The term toll is applied to the portion which an artificer is, by custom or agreement, allowed to retain out of the bulk in respect of services performed by him upon the article; as corn retained by a miller in payment of the mill-toll; also to the portion of mineral which the owner of the soil is entitled, by custom or by agreement, to take, without payment, out of the quantity brought to the surface, or, as it is technically called, *to grass*, and made merchantable, by the mining adventurer. To collect these dues the duke of Cornwall, and other great landholders in the mining districts of the west, have their officers, called "tollers."

TOLSEY. [TOLL.]

TONTINE, a species of life annuity, so called from Lorenzo Tonti, a Neapolitan, with whom the scheme originated, and who introduced it into France, where the first tontine was opened in 1653. The subscribers were divided into ten classes, according to their ages, or were allowed to appoint nominees, who were so divided, and a proportionate annuity being assigned to each class, those who

the French 'Encyclopédie' (3^d division, vol. iii., p. 704). In second tontine was opened in 1653. The last survivor was a widow, the period of her death, at which she enjoyed an income of 73,500 li. her original subscription of 300,000 li. The last French tontine was opened in 1759. They had been found various, and in 1763 the Council of Finance determined that this sort of financial operation should not be again adopted. Tontines have seldom been resorted to in England as a measure of finance, the last for which the government subscriptions was in 1789. They may be seen in Hamilton's 'Hist. Revenue,' p. 210. There have been numerous private tontines in this country.

TORTURE, in a legal sense, the application of bodily pain in order to discover facts from witnesses, or to extract confessions from persons accused of crimes. It was applied to slaves at Athens (then, *Orat. adv. Pantanet.*); and states that the Athenians and Rhodians allowed it to be applied even to free men (*Oratorie Paris.*) but there is some doubt as to the accuracy of this statement with respect to the latter. Cicero speaks of torture as an ancient Roman practice, and alludes to the customs of an earlier age ("majorum"). (*Oratio pro Rege Dece. l.*; *Pro Milone*, c. 22; *Orat. pro Cluentio*, c. 34.) However this may have been, the use of torture in judicial inquiries came fully established in the time of the early emperors. The Roman law regarded the torture as a general rule only in the case of slaves when examined as witnesses or offenders. Rules regulating the mode of applying torture, limiting the occasions of its application, were early established. One of the most important of these is that which (in the passages above cited) refers to the usage, that a slave should not be allowed to give evidence against his master except in the cases of incest (in the sense) and conspiracy. Tacitus

r. Tiberius invented the device of laying over the slave from the accused a public functionary, and then putting to the torture against his former master. This device is however ascribed to Augustus. (Dion, lib. iv. 5.) In inquiries, or trials for crimes, the "cruentum" was applied at the instance of the censor in the presence of the prætor, ædiles, and the statements made under torture were reduced into writing (in a relata), and signed by the prætor, ædiles, *Ant. Rom.*, lib. iv. c. 18, sect. but private persons also were permitted to extract evidence from their slaves by torture. (Cicero, *Orat. pro Clodio*, c. 53, 55; Quintilian, *Declam.*, 336, 353.) At a later period of the Roman empire many new regulations were made, and the earlier restrictions on this practice were removed or greatly relaxed. Several exceptions to the rule, prohibiting slaves from being tortured to give evidence that might affect the life or status of their master, were introduced, and even freemen were subjected to torture, when there was positive evidence of a crime, and probable or positive evidence that the accused was a guilty person. Moreover when the crime was of a grave character, and when the Emperor immediately permitted exemptions from torture were not denied. (Dig. 48, tit. 18, s. 10, *De Crimibus*.)

In Germany judicial torture was introduced as the Roman law became more established, and displaced the ancient trial by ordeal and feudal proceedings by armed battle. Indeed while these judicial ordeals, as they were called, continued to exist, there is no notice of the existence of torture. In most German cities judicial torture was unknown until the end of the fifteenth century; although it appears in the statutes of the Italian municipalities as much earlier period. (Mittermaier's *Deutsche Strafverfahren*, theil i. p. 394.) The regular torture, as used in the Roman law, continued in many European states until the middle of the last century, when more enlightened views led to a general conviction of the cruelty and injustice of this mode of obtaining truth. In France the "ques-

tion préparatoire" was discontinued in 1780 by a remarkable decree, which is in Merlin's "*Répertoire*," vol. x. p. 602; and torture in general was abolished throughout the French dominions at the Revolution in 1789. In Russia its abolition, though recommended by the empress Catherine in 1763, was not effected until 1801. In Austria, Prussia, and Saxony it was suspended soon after the middle of the last century; but although so seldom used as to be practically extinct, torture was allowed by the law of Bavaria, Hanover, and some of the smaller states of Germany, within the last forty years. (Mittermaier's *Deutsche Strafverfahren*, theil i. p. 396, note.) In Scotland, the use of torture prevailed until the reign of Queen Anne, when it was declared by the act for improving the union of the two kingdoms (7 Anne, c. 21, s. 5), that in future "no person accused of any crime in Scotland shall be subject or liable to any torture."

It may be inferred from the case of the Templars in the reign of Edward II. (1310), as well as from the statement of Walter de Hemingford (p. 256), that torture was then unknown in England. Nevertheless, from the year 1408 until the Commonwealth, the practice of torture was frequent, and the particular instances are recorded in the council-books, and the torture-warrants in many cases are still in existence. The last instance on record occurred in 1640, when one Archer, a glover, who was supposed to have been concerned in the riotous attack upon Archbishop Laud's palace at Lambeth, "was racked in the Tower;" as a contemporary letter states, "to make him confess his companions." A copy of the warrant under the privy seal, authorizing the torture in this case, is in the State Paper Office. With this instance the practice of torture in England ceased, no trace of its continuance being discernible during the Commonwealth or after the Restoration. But although the practice continued during the two centuries immediately before the Commonwealth, it was condemned as contrary to the law of England by judges and legal writers of the highest character who lived within that period, such as Fortescue, who con-

denies the practice in the strongest terms, though he does not expressly deny its existence in England (Fortescue, cap. 22); by Sir Thomas Smith, who wrote in the early part of Elizabeth's reign, and says that "torment or question, which is used by the order of the civil law and custom of other countries, is not used in England" (Smith, *Commonwealth of England*, book ii. cap. 27); and by Sir Edward Coke, who wrote in the reign of James I. (3 *Inst.* 35). Notwithstanding this denunciation of the practice as against law, both Smith and Coke repeatedly acted as commissioners for interrogating prisoners by torture (Jardine's *Reading on the Use of Torture in England*); and the latter, in a passage which occurs in the same book, and only a few pages before the words just cited (p. 25), impliedly admits that torture was used at examinations taken before trial, though it was not applied at the arraignment or before the judge. There is also a direct judicial opinion against the lawfulness of torture in England. In 1628 the judges unanimously resolved, in answer to a question propounded to them by the king in the case of Felton, who had stabbed the Duke of Buckingham, "that he ought not to be tortured by the rack, for no such punishment is known or allowed by our law." (Rushworth's *Collections*, vol. i. p. 638.) And yet several of the judges who joined in this resolution had themselves executed the warrants for torture when they held ministerial offices under the crown. Possibly the explanation of this inconsistency between the opinions of lawyers and the practice may be found in a distinction between prerogative and law, which was better understood two centuries ago than it is at the present day. It was true, as the above authorities declared, that torture was not part of the common law; in England no judge could direct the torture to be applied, and no party or prosecutor could demand it as a right. But that which was not lawful in the ordinary course of justice, was done under the prerogative of the crown, which authorized this mode of discovering crimes that affected the state, such as treason or sedition, and sometimes of offences of a grave character not political,—acting in this

respect independently of and even paramount to the common law. (*Rolls of Parliament*, 20 Edw. I., A.D. 1292.) The view of the subject is confirmed by the circumstance that in all instances of the application of torture in England, the warrants were issued immediately by the king, or by the privy council. The consequence was that in no country was torture so dangerous an instrument of power as in England. In other countries, where it was part of the system of law, it was subject to rules and restrictions fixed and determined by the same law which authorized the use of such an instrument, and those who transgressed them were liable to severe punishment. In England there were no rules, not beyond the will of the king. "The rack," says Selden, "is nowhere used in England. In other countries it is used in judicature when there is a *compromissio probatio*, a half-proof against a man; then, to see if they can make it full, they rack him if he will not confess. But here in England they take a man and rack him: I do not know why nor when,—not in time of judicature, but when somebody is hated." (*Table-Talk*, "Trial.")

The particular modes of torture, by the rack or otherwise, are now mere objects of literary curiosity.

Although torture was to some extent practised under the Roman Law, Ulpian (48 tit. 18, s. 1, § 24) remarks that it is declared by the Imperial constitution that we must not always give credit to it, nor yet always refuse credit to it; but is a thing uncertain, dangerous, calculated to mislead. The opinions of eminent lawyers in England have been cited; and the juridical writers of the Continent, in more recent times, have unanimously taken the same view of the subject. (Mittermaier's *Deutsche Rechtspflege*, theil i. p. 336.) There is a curious defence of torture in Wicam's 'Law of Laws, or the excellence of the Civil Law,' p. 72.

TORY. This name has now, for about two hundred years, served to designate one of two principal political parties in this country. The name Tory, as well as the name Whig, and the existence of two parties in the state corresponding to

ch have now been known for a as Whig and Tory parties, date reign of Charles II. and from 1679.

at Tories opposed the Exclusion supported Charles II. in his en- a prevent a renewal of the at- his brother, by successive pro- of the parliament. The origin as is referred by Roger North, t Tory, in a curious passage, to sion of the party with the Duke nd his popish allies. (*Examen*. The origin of the word Whig, a little younger than 'Tory, is under Whig.

inson gives an explanation of Tory, which is perhaps as good meral description of the prin- Toryism as is to be given:— a adheres to the ancient consti- the state, and the apostolical of the Church of England." they have been, or, when some ge has taken place against the e party, things as they are,—the is the aristocracy, and the aris- fore the popular element in the a, which led the first Tories to a the divine right of kings for option from parliamentary con- or passive obedience, and which ards directed their endeavours ing the suffrage as us to make er element as little popular as the freedom of the church from rol,—and the fullest possible political privilege and honour burch, as distinguished from er religious denomination,— been the cardinal characteris- yism, from the beginning to the ne.

the reigns of Charles II. and the support of the king brought into a connexion with the Ro- calies, which was inconsistent High Church views; and they led to a continual difficulty of e their persecution of Protes- ters, with the favour they e show the Roman Catholics, e partisans. Lord Hallingbroke e the following description of e this period:—" Divine, here-

ditary, indefeasible right, lineal succe- sion, passive obedience, prerogative, non- resistance, slavery, nay, and sometimes popery too, were associated in many minds to the idea of a Tory, and deemed incommunicable and inconsistent in the same manner with the idea of a Whig." (' Dissertation on Parties,' *Miscellaneous Works*, vol. iii. p. 38, Edinburgh, 1778.) But popery was an accident to the creed of the party. The lengths to which James went for the Roman Catholic reli- gion opened the eyes of the Tories; and the bulk of the party united with the Whigs in bringing about the revolution of 1688. The doctrines of divine right and passive obedience were then aban- doned by the Tories in practice. During the reign of Anne they again raised their heads in argument, and the impolitic per- secution of Sacheverel gave force to their re-appearance. But from the Revolution down to the present time the struggle between the two parties, so far as it has been one of principle, has been a struggle by the Tories in behalf of the church, to invest it with political power and privi- leges, and against the increase of the power of the people in the state, through the House of Commons; and a struggle by the Whigs for the toleration of dissent- ers from the established religion, and for the strengthening of the popular element of the constitution.

TOURN. [LEET.]

TOWN, in its popular sense, is a large assemblage of adjoining or nearly ad- joining houses, to which a market is usually incident. Formerly a wall seems to have been considered necessary to con- stitute a town; and the derivation of the word, in its Anglo-Saxon form 'tun,' is usually referred to the verb 'tanan,' to shut or enclose; in its Dutch form 'tuyn,' it signifies a garden; and in its German form 'zaun,' it means a hedge. In legal language 'town' corresponds with the Norman 'vill,' by which latter term it is frequently spoken of in order to dis- tinguish it from the word *town* in its popular sense. A vill or town is a sub- division of a county, as a parish is part or subdivision of a diocese; the vill, the civil district, being usually co-extensive with the parish, the ecclesiastical district

and, *primâ facie*, every parish is a vill, and every vill a parish. Many towns, however, not only in the popular, but in the legal sense of the term, contain several parishes; and many parishes, particularly in the north of England, where the parishes are exceedingly large, contain several vills, which vills are usually called tithings or townships. As until the contrary is shown the law presumes towns (or vills) and parishes to be co-extensive, Lord Coke goes so far as to say that it cannot be in law a vill unless it hath, or in times past hath had, a church, and celebration of divine service, sacraments, and burials. But this, for which no authority is given, appears to confound parish and vill, and to be inconsistent with the cases in which it has been held that a parish may consist of several vills. (1 Lord Raymoud, 22.) The test proposed by Lord Holt is, that a vill must have a constable, and that otherwise the place is only a hamlet, an assemblage of houses having no specific legal character. Hence a vill is sometimes called a *constablewick*. Towns are divided into cities, boroughs, and upland towns, or (as we should now call them) country towns. Towns belonging to the last of these classes have been described as places which, though enclosed, are not governed, as cities and boroughs are, by their own elected officers. The Anglo-Saxon 'tun' terminates the names of a great number of places in England; and in the southern counties the farm *enclosure* in which the homestead stands is usually called the *barton* (*barn-town*), in Law Latin, *bertona*.

TOWN CLERK. [MUNICIPAL CORPORATIONS, p. 391.]

TOWNS, HEALTH OF. On the 14th of May, 1838, the Poor Law Commissioners presented to Lord John Russell, then Secretary of State for Home Affairs, a Report by Dr. Arnott and Dr. Kay, and two Reports by Dr. Southwood Smith, relative to the prevalence of disease among the labouring classes in certain districts of the metropolis. The House of Lords having on the 19th of August, 1839, presented an address to her Majesty requesting her to direct an inquiry to be made as to the extent of the causes of

disease stated in those Reports to prevail the Poor Law Commissioners received a letter from Lord John Russell, in which he stated that her Majesty required them to make such inquiry, not only as to the metropolis, but as to other parts of England and Wales, and to prepare a Report stating the results of such inquiry.

In 1840 the subject was investigated by a Committee of the House of Commons, the result of which was a Report 'on the Health of Large Towns and Populous Districts.'

In July, 1842, the Report of the Poor Law Commissioners was presented to both Houses of Parliament, entitled a 'Report on the Sanitary Condition of the Labouring Population of Great Britain, with Appendices.' 'Local Reports on the Sanitary Condition of the Labouring Population of England,' were presented at the same time. Of these local Reports there are twenty-six, some of which relate to certain counties and others to particular towns. At the same time were presented 'Reports on the Sanitary Condition of the Labouring Population of Scotland.' In 1843 'a Supplementary Report on the results of a Special Inquiry into the practice of Intermittent in Towns' was presented. On this subject see some remarks under **INTERMITTENT**.

On the 9th of May, 1843, Commissioners were appointed by the Queen for the purpose of "inquiring into the present state of large towns and populous districts in England and Wales, with reference to the causes of disease among the inhabitants, and into the best means of promoting and securing the public health under the operation of the laws and regulations now in force, and the usage at present prevailing with regard to the drainage of lands, the erection, drainage, and ventilation of buildings, and the supply of water, in such towns and districts, whether for purposes of health, or for the better protection of property from fire; and how far the public health and the condition of the poorer classes of the people of this realm, and the salubrity and safety of their dwellings, may be promoted by the amendment of such laws, regulations, and usages."

The First Report of the Commissioners

presented to both Houses of Parliament at the end of June, 1844. The report is accompanied by 437 folio pages of notes on which the Report is founded, appendix of Special Reports on the Sanitary Condition of several Towns, and the most important of which are: *Report on the Sanitary Condition of the Poor of the City of London*, by W. H. Duncan, M.D.; *Report on the Sanitary Condition of the Poor of the City of London*, by John Ross Coulter, Esq.; *Report on the Sanitary Condition of the City of York*, by Thomas Cook, M.D.; and *Report on the Sanitary Condition of the City of Nottingham*, by James Hawksley, Esq.; besides other reports on the Supply and Filtration of Water, on the Obstacles to Improvement in the Structure of Buildings, on the Cleansing of Streets and Houses, and on the Application of Refuse.

The Second Report of the Commissioners was presented to Parliament in February, 1845. It treats briefly of the Causes of Disease, and at considerable length of Sanitary Measures. It is followed by a report on the State of Birmingham and its Towns, by H. A. Blaney, Esq.; a report on the State of Bristol and other Towns, by Sir Henry T. De la Beche; a report on the State of large Towns in Lancashire, by Dr. Lyon Playfair; and a Supplement containing information on the subject of lodging-houses, and other matters connected with inquiries of the Commissioners.

We have thus briefly stated the origin and progress of this important investigation into the sanitary condition of the labouring classes of Great Britain, chiefly in the towns, but extending indirectly to all parts of the country.

The agencies for improving the physical condition of the labouring classes of the poor are also at work. Among these is the "Health of Towns' Association," of which the Committee includes members, dignitaries of the church, members of parliament, and other gentlemen. They have published a 'Lecture on the Unhealthiness of Towns, its Causes and Remedies,' delivered at Cross-street, London, by William Augustus M.D., Physician to King's College Hospital; a 'Lecture on the Unhealthiness of Towns, its Causes and Remedies,' delivered Dec. 10, 1845, at the Medical Institute at Plymouth, by Vis-

count Ebrington, M.P.; and a 'Report of the Committee to the Members of the Association, on Lord Lincoln's Bill,' which was introduced into Parliament at the close of the session of 1845.

These important inquiries have proved by undeniable evidence, that the districts inhabited by the labouring classes, and often by tradesmen, in large towns, in many small towns, and in several parts of the country, are in a very noxious state from want of drainage, want of cleanliness, imperfect ventilation, deficiency of water, and density of population; the consequences of which are great frequency of sickness, and excessive destruction of human life. Typhus fever, cholera, consumption, scrofulous and other chronic complaints, mostly arising from causes which might have been prevented, are found to exist to an extent which it is painful to contemplate. The causes of sickness are generally most numerous and most intense in the crowded districts, and the mortality is found to be, with few exceptions, in proportion to the density of population. In the metropolis, for instance, the annual mortality is 3 per cent. in Whitechapel, but only 2 per cent. in St. George's, Hanover-square. In the district of Bethnal-green, 67 houses, on an average, contain 580 persons; and in some cases there are 80 persons in a single house.

Of fifty towns which were visited by direction of the Commissioners, only eight were found to be in a tolerable state as to drainage and cleansing; and as to the supply of water the reports were still more unfavourable.

The annual average mortality in England is 2·207 per cent., or 1 in 45. In healthy districts it is 2 per cent., or 1 in 50. In the metropolis the deaths are 1 in 39; in Birmingham and Leeds 1 in 37; in Sheffield, 1 in 33; in Bristol, 1 in 32; in Manchester, 1 in 30; in Liverpool, 1 in 29. In Brussels they have been found to be 1 in 24. The mortality is greater in Liverpool than in any other town in England. By the return made to the Town Council of Liverpool in 1841, by their surveyors, it appears that there were then 2896 courts, which contained a population of 68,545 persons. In these courts

1272 cellars were occupied by 6290 persons; of the number of cellars occupied in streets, 2948 were described as damp, and 240 as wet. The gentry in Liverpool live 55 years; the tradesmen 22; the working-class 15. The average of the whole town is only 17 years. By extracting from the mortuary registers of the metropolis for 1834, the ages at death of the gentry, the tradesmen, and the working classes, who died at the age of 15 and upwards, Mr. Guy ascertained that the gentry lived 69 years, the tradesmen 49, and the working-classes 48. In 1844 the deaths in the metropolis were 56,423. If the rate of mortality had been 1 in 50 instead of 1 in 39, the deaths would have been only 46,146, thus giving a saving of 10,278 lives in one year. From a Report of the Registrar-General it appears that out of every million of inhabitants 27,000 die every year in the large towns, and only 19,500 in the rural districts.

The large towns have already begun to make improvements. The improved drainage in twenty streets of Manchester has been found to diminish the annual number of deaths by more than 20 in every 110; and similar results of structural improvement have followed in other instances.

The loss of life, and the pecuniary charges consequent upon it to individuals and the community, are not the only considerations to be attended to. Not only the sickness which precedes death, but the sickness which is cured, render the sufferers incapable of following their usual occupations, and oblige them and their families to seek relief from the parish, and from public and private charity. It has been shown that pecuniary saving would result from sanitary improvements to such an amount as to justify the interference of the legislature, if it were only from motives of public economy.

The power vested in courts-lord by ancient usage is resorted to in a few towns for the abatement of minor nuisances. Mr. Coulthart gives a detailed description of the various matters which have been taken cognizance of by the Justices at Ashton-under-Lyne with benchward officer. In most places, however, the ex-

ercise of these powers has become obsolete, even where the courts continue to be held.

The measures necessary to be in order to improve the condition of large towns and parishes are comprised under the heads:—

1. Drainage, including house drainage, and the drainage of a not covered with houses, yet in the health of the inhabitants.

2. The paving of streets, and alleys.

3. Cleansing, comprising the of all refuse matter and earth drainage, and the removal of it.

4. A sufficient supply of water for public and domestic use.

5. The construction and repair of buildings in such a manner as to rather than injure the health of inhabitants.

The Second Report of the Select Committee gives Thirty Recommendations, each of which is based on the reasons on which commendation is founded. We afford space for a summary of commendations.

No. 1 recommends that in all local administrative body shall special charge and direction of required for sanitary purposes, the crown shall possess a general supervision.

Nos. 2 to 11 relate to Drainage and plans; definition of drainage by the crown; appointment of surveyors; investigations by the crown, or representatives of management of the drainage of area by one body; purchase of mill-owners and others; construction of sewers, branch sewers, and house-ratting of landlords when house separate apartments, or when it collected more frequently than the quarter, or when the yearly rent than 10l.; providing of funds by administrative body, distributed among the owners of the property, and charge of house-owners of houses to which they power to view, survey, and

liquidation of debt in-

struments that the *Prising* be
unimpaired in the degree
to be performed by the local

and is, relate to the *Clas-*
sification and some points of property
the author; manner of large
thing; and statement of giving
from various estimations

to relate to the supply of
efficient quantities and only
the means of the individual,
showing the effects, some-
times and others, and the ex-
treme; purchase of the interests
given, and showing the state
the supply of water and
information only; the anti-
public trade and such houses
or others; and especially ap-
plied the supply of water in
not only constant, but at se-
vere in circumstances will

it are regulations for build-
ing power to raise money for
of property, for the purpose
inconvenience, and without
and others; prohibition of
the dwellings, except when
some discussion and pre-
sent; provision for building
in with proper services, and
system of ventilation in all
other dwellings and recent
local houses.

it is recommended that power
be local administration body
entitled to discuss houses,
to be a decision made from
of that power be given to
persons and laws rules for
building houses for the re-
quire, transport, and persons
giving houses.

concerns the expenditure of
land in each town or district,
not perfectly on the basis
of each town or district.
instruments the establishment
also, and that the local admin-
by be empowered to raise the

necessary funds for the management and
care of the works when established.

A large portion of the 'Report of the
Committee on Lord Lister's Bill' be-
fore mentioned, is occupied with showing
that the supply of water, wherever prac-
ticable, should be constant, not only in the
main-pipes, but in the branch-pipes, thus
doing away entirely with the use of wa-
ter-tanks; and concluding that in most
cases such a constant supply is not only
practicable but economical, and that it
would contribute in the highest degree to
the cleanliness of houses in crowded dis-
tricts, and consequently to the health of
the inhabitants.

TOWN SUPPLY. This term is sometimes
used to denote the inhabitants of a town
in their collective capacity. In legal sig-
nification it is a well known part of a
parish in cases where a parish has been
divided for similar purposes into several
vills or townships.

TRAFFIC. (See *NAVIGATION*.)

TRANSLATION. (See *DICTIONARY*.)

TRANSPORTATION (*trans* and *port-*
to), removal, movement to some fixed
place. Under *Penitentiaries*, the general
subject of punishment has been considered,
and particularly of the punishment of
death. Other punishments, such as
transportation and imprisonment, will
be briefly considered here. The object
of this article is not to discuss fully the
extensive subject, but to indicate the
various departments into which it may be
divided, which division will show the
complex character of that class of
punishments commonly called *Secondary*
Punishments, which comprise *Transporta-*
tion and *Imprisonment*, with all the pec-
uliar punishments which are employed
in connection with *Transportation* and
Imprisonment.

A complete discussion of *Transporta-*
tion would include its origin as a mode
of punishment; acts of punishment rel-
ating to it; the system under which it was
carried into execution in the American
colonies; system under which it was
conducted in the early history of the
Australian colonies; system on which it
was recently executed in New South
Wales and Van Diemen's Land; com-
parison; School of Labor; Chain-gang; with

road-parties; penal settlements; expense of the transportation system as hitherto enforced; contemplated changes in the convict discipline of the Australian penal colonies; system of transportation as enforced at Bermuda; theory of transportation.

Connected with this is the subject of *Hulks*—their origin, design, and history; description of a hulk; discipline of convicts in the hulks; employments; expense of the system.

Thirdly, *Prisons*—their state at the end of the last century, and the history of improvements in them since: the system of classification; the silent system—its theory and practical working; regulations of the prisons in which this system is in force; the labour imposed on the prisoners—the treadwheel, crank machine—expense of the silent system; the separate system—its theory and objections to it; its origin and history in England—principles of prison construction—employments of prisoners—expense of the system; prisons of England generally; treatment of untried prisoners; disposal of prisoners after their discharge; prisons for juvenile offenders—Parkhurst Reformatory.

Fourthly, Institutions in England auxiliary to those for punishment, or Houses of Reformation; Refuge for the Destitute, Philanthropic Institution.

Fifthly, Prisons in Scotland and Ireland, and in the British dependencies.

Sixthly, Capital Punishment; the various arguments for and against maintaining this punishment. [PUNISHMENT.]

Lastly, Progress of penal reform in foreign countries.

The statute of 39 Elizabeth, c. 4, for the banishment of dangerous rogues and vagabonds, was virtually converted by James I. into an act for transportation to America by a letter to the treasurer and council of the colony of Virginia, in the year 1619, commanding them "to send a hundred dissolute persons to Virginia, which the knight-marshal would deliver to them for that purpose." Transportation is not distinctly mentioned in any English statute prior to the stat. 18 Car. II. c. 3, which gives a power to the judges at their discretion either "to execute or

transport to America for life the most troopers of Cumberland and Northumberland." Until after the passing of the stat. 4 Geo. I. c. 2, continued by stat. 4 Geo. I. c. 23, this mode of punishment was not brought into common operation. By these statutes the courts were allowed a discretionary power to order persons who were by law entitled to their clergy to be transported to the American plantations. Transportation to America under the statutes of George I. lasted from 1718 till the commencement of the War of Independence in 1775.

A plan for the establishment of penitentiaries, which was strongly recommended by Judge Blackstone, Mr. Eden (afterwards Lord Auckland), and Mr. Howard, was taken into consideration by parliament, and the act 19 Geo. III. c. 74, for the erection of penitentiaries passed. The government failed, however, to adopt the necessary measures for its execution; and transportation was assumed by an act passed in the 24th year of George III., which empowered his majesty in council to appoint to what place beyond the seas, either within or without his majesty's dominions, offenders should be transported; and by two orders in council, dated 6th December, 1786, the eastern coast of Australia and the adjacent islands were fixed upon. In the month of May, 1787, the first band of convicts left England, which in the succeeding year founded the colony of New South Wales.

The present condition of a transported felon is mainly determined by the 5 Geo. IV. c. 84, the Transportation Act, which authorizes the king in council "to appoint any place or places beyond the seas, either within or without the British dominions," to which offenders shall be conveyed, the order for their removal being left to one of the principal secretaries of state. The places so appointed are the two Australian colonies of New South Wales and Van Diemen's Land; the small volcanic island called Norfolk Island, situated about 900 miles from the eastern shores of Australia; and Bermuda. The 5 Geo. IV. c. 84, gives to the governor of a penal colony a property in the services of a transported offender

of his sentence, and assign over such offender to the penal colonies. The 9 Geo. IV. c. 64. empowers the governor to grant a partial remission of sentence. 2 & 3 Wm. IV. c. 62. in this respect. In New South Wales and Van Diemen's Land subject to a variety of control by the local legislatures or the act 9 Geo. IV. c. 64. *History of Transportation; Select Committee of the House on Transportation,*

offences for which transportation are mentioned in the act.

Persons are designed for the penal colonies convicted of crimes in the penal colonies, who are specified in the act of the secretary of state for the colonies. In New South Wales, the penal Norfolk Island; in Van Diemen's Land, there is a separate Harbour; at present Arthur.

In 1836, 160,000 convicts were transported from this country to the penal colonies, of whom 150,000 were men. The following sums were expended on account of the transport of convicts.

	£
Transport of convicts for general, colonial services	2,729,790
Transport of convicts for general, colonial services	4,091,581
Transport of convicts for general, colonial services	1,632,502
Transport of convicts for general, colonial services	29,846

From 1st to 31st March,	8,483,519
Minimum on bills,	507,195

7,976,324
 The cost of each convict has been estimated at 28*l.*, and the various expenses and punishment have been estimated at a head, making in all 30*l.* a head. The expense en-

tailed upon this country by the penal colonies has been, on the average since their commencement, 150,000*l.* a year; but a few years ago the annual expenditure was more than treble that amount.

The following was the expenditure of this country on account of New South Wales and Van Diemen's Land in the year 1836-7:—

New South Wales.	£
Ordinances of the army	45,801
Commissariat	3,450
Ordinance	12,014
Navy	4,541
Extraordinaries of the army	55,525
Special disbursements on account of convicts	127,949
	220,480

Van Diemen's Land.	£
Ordinances of the army	16,354
Commissariat	3,059
Ordinance	11,025
Navy	515
Extraordinaries of the army	20,847
Special disbursements on account of convicts	113,082
	164,883

Transport of convicts	73,030
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Total expenditure for the year 1836-7	482,013
(Transportation Report.)	

In addition to this sum, the colonial expenditure on account of the administration of justice, gaols, and police was 90,000*l.*, an amount nine times as great in proportion to the population as that of the United Kingdom for similar purposes.

In 1837 a committee of the House of Commons was appointed to inquire into the subject of Transportation, and to suggest improvements. The labours of that committee have been followed by some changes, and there is a prospect of still greater.

All convicts sent to Bermuda are employed by the government on public works in the dockyards. The system of punishment pursued is essentially different from that which has been in force

in the Australian penal colonies, and closely resembles that adopted in the hulks in this country. The convicts sent to Bermuda are selected as being the best behaved; they are kept apart from the free population; they are shut up in hulks by night, and are worked in gangs by day under the superintendence of free overseers. A small amount of wages is paid to them for their labour, a portion of which they are allowed to spend, and the remainder forms a fund, which they receive on becoming free. At the expiration of their sentences they do not remain in Bermuda, but are sent back at the expense of the government of this country. Transportation to Bermuda, with some points of recommendation compared with transportation to the Australian colonies, is thus, on the other hand, without the argument in its favour, that it rid England of the criminals sent or it. (Capper's Reports.)

Mr. Bentham, Dr. Whately, the present archbishop of Dublin, and other writers on the theory of punishment, have condemned the general principle of transportation; and comparatively little has been urged in opposition to their arguments. Mr. Bentham's objections will be found in a chapter on Transportation, in his 'Theory of Punishments'; the archbishop of Dublin's, in his two 'Letters to Earl Grey.' Their arguments may be summarily stated as follows:—1st, Transportation has failed in all experiments which have yet been made upon the principle. 2nd, That transportation necessarily involves, in reference to the country from which the criminals are sent, want of exemplarity. 3rd, That it lays a pernicious foundation for future communities. 4th, That efficient inspection is sacrificed by it. 5th, That it is more expensive than a home prison system. To these objections it is replied:—1st, That transportation has not failed, but only a particular system of carrying that punishment into execution—a system which is not necessarily connected with transportation; a system which was instituted in the colonies at a time when prisons in the parent country were in the worst state possible; a system never sound in principle according to the

progress of improvements in penal arrangement generally. 2nd, That in reference to the end contemplated by the word *example* or *exemplarity*, transportation is not deficient, according to the supposition that exemplarity is made only of the spectacle of criminal suffering punishment; but in that sense, all experience proves that, instead of preventing crime, exemplary punishment have frightfully increased them; and so far as there is any real value in the principle (exemplarity) in question, it is an indefinite, obscure notion out of apprehension; but, that various objections to the principle, in point of fact, in the sense of exemplarity connected with the spectacle of punishment, that transportation is in the same position as any home system of criminal discipline, the public at large being as little as spectators of the process of the trial in the separate prison as they are of the modes which transportation is carried on effect; that in the sense of power to deter to produce apprehension independently of exhibited punishment, it is a prior recommendation to any home system. 3rd, That the objection, that transportation lays a pernicious social foundation, is made on a presumption overlooking the primary question which penal institutions are designed to solve, viz. the criminals sentenced to that punishment or

* Exposure in a state of speculation was introduced into Pennsylvania in 1786. In the year 1790, four years after the commencement, the practice was abolished, and the effect was astonishing; for at the end of another period of five years, that is to say, 1794, the population was in the mean while increased at the rate of about a half per cent. per annum, and the crime in other respects having remained stationary, had diminished by two-thirds. The increase of recorded crimes after the introduction of slavery was too great and too continuous to be ascribed to any great extent by any increase of population otherwise taken by account of an increase of crime. And no part of the retrospective theory of recorded crime can be so successfully applied, as has been remarked in this instance, and here, to the question: The increase of crime in the state of Philadelphia, where, doubtless, most of the penitentiary was made, was much greater than increase of crime in the country, and though it was, pp. vii-c. (Report of the Committee on the Prison Discipline to the House of Representatives, Vol. 1.)

a criminal in character and bent, on the contrary, the chief society in a new country fully, in the respects of high and labour, and good prospects more calculated to establish the moral benefit to the character criminal wrought by a more secondary punishment, circumstances of an old society employment is uncertain, wages at, besides, prejudice is always that the man once fallen, and more opposed to his performance, in an old and established community, than in a young one, and, so to speak, chaotic.

That experience has not existence of greater abuses in the treatment of convicts abroad than at home; and that the law can easily be made against connection with penal colonies been made in connection with the mother country (in the appointment of inspectors) within the last

5th. That the question of expense where the difference supposes that of two systems is very prematurely discussed, when without respect to any satisfaction of the greater efficiency of another system. (Captain *Archer's Australians*; Colonel *Archer to the Archbishop of Dublin*; *Merits of a Home and of a Foreign Prison*; *of a Social and a Separate Convict Management*, dis. F. M. Jones, 1842.)

hulk, Dutch; *hulk*, Saxon, the ship), used as places of confinement, punishment for offences; with the galleys of the Italians, of the French, and our own and galleys.

The plan of confining offenders in board hulks was adopted in 1764, when the disturbances interrupted the transportation. The first statute authorizing the plan was the 16 George III. c. 24, for two years only, and continued by two other statutes till it was repealed by George III. c. 74, which was,

however, founded upon the same principles with the 16th, and may be considered in part as an improved edition of that act.

The notice of parliament does not appear to have been called to the hulks between the passing of the 19 George III. c. 74, and the year 1783, when an act was passed, the 24 George III. sess. 1, c. 12, converting the hulks from prisons, in which criminals were to be punished by hard labour, into places of temporary confinement for convicts, between the period of their sentence to transportation and the completion of the necessary arrangements for carrying that sentence into execution. The management of the convicts was given to officers called overseers, whose powers corresponded with those of the superintendents under the former act. They were to feed and clothe the offender, and keep him in such manner, and to permit him, where the same could be safely done, to labour at such places, and under such directions, limitations, and restrictions, as his majesty or certain justices of the peace should appoint. In case the convict should receive employment, he was to be allowed half the return arising from his labour for his own use; but it was provided that no convict should be obliged to work.

The time of the offender's confinement was to be reckoned in discharge or satisfaction of the term of his transportation, as far as it might extend. Similar returns to parliament or the King's Bench were required under this as under the former act. The 24 George III. sess. 1, c. 12, was repealed by the 24 George III. sess. 2, c. 36, but its provisions were incorporated in this act, with the exception of those concerning the labour of the convicts, which it was provided should be compulsory. This last act was continued by various other acts till the year 1815, without any alteration in its purpose, excepting in the 28 George III. c. 24, and the 42 George III. By the former of these it was provided that the convicts should be visited and treated as offenders sentenced to hard labour, and that the expenses occasioned by their maintenance or death should be defrayed by the overseers. By the latter the visit-

est of the contractors was limited to that of supplying provisions, clothing, and other necessities to be consumed in the hulks. The 55 George III. c. 156, repealed and re-enacted by the 56 George III. c. 27, empowers the king to appoint a person to the office of superintendent, and the persons to be deputy or assistant superintendents, also resident overseers. The latter of these acts was continued by the 1 and 2 George IV. for two years, and its provisions were then re-enacted with some variations, in the 5 George IV. c. 34. (*Statements and Observations concerning the Hulks*, by George Holford, Esq., M.P.)

From the evidence taken before a Committee of the House of Commons appointed in 1832 to inquire into the subject of secondary punishments, and before a Committee of the House of Lords in 1835, we are led to conclude that no material changes had then been effected in the discipline pursued on board the hulks.

The stations at which hulks are maintained in England are Portsmouth, Gosport, Devonport, Chatham, Woolwich, Deptford; besides Bermuda, Gibraltar is designed to be a foreign station.

The following returns relating to the hulks are taken from the reports which were made by the superintendent to the government:—On the 1st January, 1841, there were 3552 convicts on board the various hulks in England; and during the year, 3625 more were received into custody, besides 63 transferred from the hulks at Bermuda. Of the convicts in custody, and those received in the course of the year, in all 7240, 2374 were transported to Van Diemen's Land, 180 of whom were boys under sixteen years of age; 80 were sent to Bermuda; 66 were transferred to the Penitentiary (Millbank); and 7 to Parkhurst prison: 262 were discharged; 196 died (being 2½ per cent. upon the gross number); 1 escaped; leaving 4254 convicts on board the hulks in England on the 31st December, 1841. Of the total number received, 52 were known to have been transported* before; 10 had been in the Penitentiary; 1625 had

been convicted previously of various offences; 487 had been before in custody; and the remaining 1451 were not known to have been in prison before. Three prisoners were received during the year under 10 years of age; 213 between the ages of 10 and 15; 958 between 15 years and 20; 1612 between the ages of 20 and 30 years; and 839 who were above 30 years of age. The total expense of the hulks is represented for the year at 64,527l. 10s. 7½d., and the total value of the labour performed as 72,366l. 15s. 6d. (*Two Reports of John Henry Capper, Esq., Superintendent of Ships and Vessels employed for the Confinement of Offenders under Sentence of Transportation, ordered to be printed 21st March, 1842.*) The total expense per man in the hulks in England is 18l. 12s. 11d. The average value of labour per man is estimated at 10l. 18s. 9d., making the average annual expense per man 7l. 14s. 2d. The total cost per boy in the hulks is 13l. 3s. 6d. The value of the labour performed by the prisoners in the hulks at Bermuda leaves an estimated annual profit for each of 13l. 3s. 6d. (*Lord John Russell's Note on Transportation and Secondary Punishment, 8th January, 1839.*)

The hulks in England are viewed merely as an intermediate establishment between the common gaols and the penal colonies, for prisoners sentenced to transportation; but, in fact, in many cases they prove a substitute for that punishment. They are considered to be the worst branch of secondary punishment in England, and their discontinuance has been urged.

Prisons (*Prison*, French), places of safe custody, of punishment, and reform.

The history of modern improvement in the prisons of this country begins with the labours of Mr. Howard in the last century. In the first section of Mr. Howard's book on 'The State of the Prisons in England and Wales,' which he entitles 'A General View of the Districts in Prisons,' published in 1775, he presents a summary of the abuses which existed in the management of criminals at that time. These abuses related to food, ventilation, drainage, want of classification of prisoners; and the effects were disease

* This means had been in the hulks before.

the further corruption of all persons were confined in prisons.

the labours of Howard and of others but slowly attended with suc-

Nearly fifty years after the date of the above details the Prison Discipline Society remark, that there yet exist many prisons in the same condition as that in which Howard left them—monuments of the futility of his statements, and of the ignorance with which his recommendations had been regarded. (*Fifth Report*, p. 2.) In 1818 it appears by parliamentary returns, that out of 518 prisons in the United Kingdom, to which upwards of 37,000 persons were committed in that year, 23 prisons only were classed according to law; 59 prisons had no division whatever to separate males from females; 136 had only one division for that purpose; 68 had only two divisions, and so on; 23 only were classed according to the regulations of statute (24 George III. c. 54, sect. 4) which provides for eleven. In 445 prisons no work of any description had been introduced; in 73 prisons, though some work was performed, yet the number was exceedingly small in which employment to any extent had been carried on. In the gaols built to contain only 8545 persons, there were at a time 13,057 persons confined.

Classification of Offenders.—The argument of those who wished to make the punishment of classifying prisoners is succinctly stated by a distinguished American writer on penal jurisprudence: "That, as a place of punishment, a prison would soon lose its terrors if its aged inmates were suffered to enjoy society within, which they had always feared when at large; and that, instead of a place of reformation, the prison would become the best institution that could be devised for instruction in all the mysteries of vice and crime, if the professors of crime were suffered to make disciples of those who may be comparatively ignorant. To remedy this evil therefore we must resort to classification; first, the young must be separated from the old; then we must make a division between the novice and the practised offenders. Further divisions however were found indis-

pensable, in proportion as it was discovered that in each of these classes there would be found individuals of different degrees of depravity, and of course not only corrupters, but those who were ready to receive their lessons. Accordingly, classes were multiplied, until in some prisons in England we find them amounting to fifteen or more." The same writer exposes the fallacy of this argument in what follows:—"But in the consideration of this question these evident truths seem not to have had their proper force: first, that moral guilt is not the immediate subject of human observation; nor, if discovered, is it capable of being so nicely appreciated as to enable us to assign to each individual who may be infected with it his comparative place in the scale; and if it could be discovered, it would appear that no two individuals could be found contaminated in the same degree: secondly, that if these difficulties could be surmounted, and a class formed of individuals who had advanced exactly to the same point, not only of offence, but of moral depravity, still their association would produce a further progress in both." (*Livingston's Penal Code for the State of Louisiana: Introductory Report to the Code of Reform and Prison Discipline*, p. 309; see also q. 1784, *Evidence of Samuel Hoare, Esq.: Select Committee of the House of Commons*, 1832.) Classification continues to be the leading principle of arrangement in many prisons; in others the object contemplated by it, namely, the prevention of contamination, is further sought by the prohibition of oral communication between the prisoners.

Of the prisons which have been subjected to any fundamental changes during the last twenty years, the greater number are conducted on the *silent* system. The advocates of this system supposed that contamination would be prevented by the intercourse of the tongue being prohibited. The first objection incurred in carrying out this plan was the great expense of employing a requisite number of officers to enforce silence. To mitigate or get rid of this objection, another evil was produced by the introduction of the practice of giving to pri-

exerts a control over other prisoners. In Coldbath Fields prison, containing on an average 900 prisoners, no less than 218 were, in 1837, removed from the operation of the law and the endurance of their punishment by being appointed to offices of trust or control. Besides these 218 there were 64 regular officers; so that 272 persons were appointed to superintend 682 prisoners (i. e. 900 minus 218, who had appointments), being in the ratio of one officer to 25 prisoners. With all this wasteful superintendence, involving an entire sacrifice of discipline, the great object of prisons in the principle of Coldbath Fields was not attained. "The minds of the prisoners (say the Inspectors of Prisons in their Report for that year) are kept under perpetual irritation by the prohibition of speech, their inactivity at work to find means of evading it, and they are still further depressed by frequent subjection to punishment for an offence of a merely arbitrary character."

Under any arrangements the principle on which such prisons are conducted almost necessarily involves great and numerous vices.

The power of establishing rules for prisons is vested by 5 & 6 Wm. IV, c. 38 in the secretary of state for the home department. Distinct divisions of each prison are appropriated to male and female prisoners. The several wards, cells, yards, &c., are devoted to distinct classes of prisoners. There are baths for the cleansing and bathing of prisoners; a furnishing even for the cleansing and disinfecting of their clothes, linen, or bedding. A competent number of cells adapted to solitary confinement for the punishment of refractory prisoners, and for the reception of such as may by law be sentenced to confinement therein, is provided. Separate rooms are provided as infirmaries or sick wards for the two sexes, and so far as possible for the different descriptions of prisoners. Every prisoner is provided with suitable bedding, and every male prisoner with a separate bed, hammock, or cot, either in a separate cell, or in a cell with not less than two other male prisoners. Convenient places are set apart for washing,

combing, &c., and yards for it is provided by law that the justice appointed at each prison shall meet periodically at least inspect the several journals, and books, and give such directions to them as may be necessary; shall regulate a scale of fines in proportion to the offences committed by the governor upon the officers for negligence in the performance of their duties; that they see every officer; examine from time to time the state of the buildings, diet, clothing, separation, inspection, employment, health, diet, &c., of the prisoners; also take care and disposal of their earnings; possess attending the prison, an improvement which may be as they are required to direct and they think proper to be done; the use of prisoners who do not go to the established church; they see into contests for the employment of prisoners in any work or task in the prison, subject to the usual general or quarter sessions; authorize any prisoner to be in the service of the prison; the service of any officer in the instruction of any other prisoner; order necessary clothing to be given to any prisoner on charge, or may pay his passage prisoner into with such a sum of money as they may think fit; required to make a report upon state of the prison at every sessions; in case of contagious or any other emergency, they power to issue an order to boards and walls, to remove the to some other prison or place of some within their jurisdiction; of any criminal prisoner being repeatedly offend against the prison, or of any prisoner who the governor is satisfied to be visiting justice may order to be provided by military and to case of absolute necessity to be removed to some other place of confinement in home; a visiting to receive the completion of any sentence, fine, &c., and to be returned to any prisoner who

of by the surgeon. For every is provided that there shall be or, chaplain, and surgeon; and female branch of the prison a and a sufficient number of asters and mistresses, male and ankeys, and subordinate officers; whom, excepting the chaplain geon, are allowed to hold any have any occupation except what o the prison. For the various to the governor, and his admin, the chaplain, surgeon, and the reader may consult the

erent dress is worn by a prisoner d of felony from one convicted of menior: he is employed, unless d by sickness, at such hard s can be provided, and for so ours (not exceeding ten) daily, on Sundays, Christmas, Good-or any public fast or thankgivi. Some descriptions of misde-s are allowed to wear their own if deemed sufficient and proper; y have various other privileges. s convicted of felony, but not d to hard labour; prisoners conf misdemeanour, who do not der the description contemplated above detail; and other convicted s not sentenced to hard labour— clothed in a particular dress, and d in some work or labour which vere; and they are restricted to a diet. They are required, like r prisoners, excepting misdemen-f the first division, to preserve

(*Rules and Regulations for the nent of Westminster Bridewell, as by the Secretary of State for the department, 17th June, 1841; Res-s for Prisons in England and 1840.*)

labour which is most generally in prisons conducted on the ystem is that of picking oakum, the tread-wheel. The labour of ad-wheel is at present chiefly to the grinding of corn and g water for prison consumption. *Description of the Tread-mill for ployment of Prisoners, with Obser-on its Management, published by*

the Committee of the Society for the Im-provement of Prison Discipline, &c.)

In some prisons females as well as males are employed on the tread-wheel, the application of this mode of punish-ment to either or both of the sexes being determined by the discretion of the justices of the peace in connection with each prison. The application of tread-wheel labour to women is liable to occasion miscarriage in cases of preg-nancy, and in various ailments of the sex it is apt to produce serious disease; it is injurious also to males when applied for a prolonged period. As a punishment it is very unequal, its severity depending upon the physical strength of those sub-jected to it; and it has been administered with great want of uniformity in dif-ferent prisons.

Another mode of employing prisoners, but one which is not so much in use as the tread-wheel, is with the crank ma-chine, which is constructed of different sizes. Plans will be found in the work to which we refer. (*Description of the Tread-Mill, and of the Portable Crank-Machine by Wm. Hase.*)

The average expense of each convict kept in a House of Correction, on the silent system, is about 55*l.* or 56*l.* for four years. (Lord John Russell's *Note on Transportation and Secondary Punish-ments*, January 2, 1839.)

Separate imprisonment differs from what is ordinarily understood by solitary imprisonment in the following particulars:—^a In providing the prisoner with a large, well-ventilated, and lighted apartment, instead of huming him in a confined, ill-ventilated, and dark cell; in providing him with everything that is necessary to his cleanliness, health, and comfort during the day, and for his repose at night, instead of denying him those advantages; in supplying him with sufficient food of wholesome quality, instead of confining him to bread and water; in alleviating his mental discomfort by giving him employment, by the regular visits of the officers of the prison, of the governor, surgeon, turnkeys, or trades' instructors, and particularly of the chaplain, instead of consigning him to the torpor and other bad consequences of idleness, and the

struction; in providing him with the means of taking exercise in the open air, whenever it is necessary and proper, instead of confining him to the unbroken seclusion of his cell." (*Inspectors' Report, 1838.*) Arguments both for and against this system have been urged with considerable force. (*Australiana, or Thoughts on Convict Management; and A General View of The Social System of Convict Management, &c.,* by Captain Maconochie; *The Merits of a Home and of a Colonial Process; of a Social and of a Separate System of Convict Management,* by P. M. Innes; *Reports of the Inspectors of Prisons.*)

The separate system originated in this country in the year 1790, and was first tried in the county gaol, Gloucester. This building was provided with cells in which prisoners were confined apart, day and night, from the hour of admission to that of discharge. Those confined under short sentences were denied, those under long sentences were provided with, employment. Moral and religious instruction was given in the cells and in the chapel. This discipline was enforced during seventeen years, in which period there were very few re-commitments. But the increase of population demanding increased prison accommodation, the system was abandoned to make room for additional prisoners. In 1811 the favourable opinion conceived of separation in prisons by a committee of the House of Commons led to a recommendation "that a separate prison should be erected in the first instance, for the counties of London and Middlesex, and that measures should be taken for carrying on the penitentiary system, as soon as might be practicable, in different parts of the

establishment of institutions, and after having been for some operation it was abandoned, owing to great mortality which prevailed. This mortality, it is alleged, was the unhealthiness of the site, which the Penitentiary is built in connection of it with the separate in the nature of a consequence, (*Inspectors' Reports.*)

A model prison on the separate at Pentonville, London, has been completed, and others have been projected in different parts of the country. The success or failure of which will determine whether the system shall not become general. The Report of the Inspectors of Prisons expounds general principles followed in the construction of the Model or Pentonville prison.

Any estimate of the expense of the separate system in that system has been for some operation, be liable to dispute. The Penitentiary (which is still an imperfect criterion) the net expense of each prisoner, deducting earnings, is said to be 24l. 6s. 6d. (John Russell's *Note on Transportation and Secondary Punishments.*) It is by the advocates of the system of imprisonment in a prison need be only a half or two-thirds the duration of a sentence to as prison for it to be as severe as much dreaded, and that the difference in expense will be thus made up.

The improvement in prison discipline has little more than commenced even in the metropolis, where it has been long admitted as such an undiminished force. The desirability

at gaol of Newgate, given by the
tore of Prisons in their Report for
equally applied in the year 1842 :—
prisoners are associated in smaller
cells than formerly, but they are
brought into closer contact, and com-
panionship is more directly facilitated;
mutual acquaintance is more per-
petuated, knowledge of each other's
tempers, and capacities is more
acquired, more firmly established,
and more mischievously brought to bear
on the interests of society and their
well-being and reformation. What
the inspectors (but mischief, inevit-
able manifold, can be expected from
keeping up from morning to night, with-
out intermission and change, in utter
isolation (in numbers varying from three
cells, or even more), the most aban-
doned characters, adepts in crime, com-
municate with the uninitiated or
offender?"

The new County Gaol and House of
Correction at Reading, Berkshire, has
been constructed for the application of
the separate system, and has now (1846)
been more than two years in operation.
Reforms have recently been made in
the County Prison, for the same
purpose. The results have been in the
most degree satisfactory wherever the
separate system has been brought into operation.
Prisoners are sometimes punished by
whipping, and sometimes by flogging.
Flogging is used excepting in the case of
female offenders, or as a disciplinary
punishment in the hulks or in prison.
The principle of corporal punishments,
however, as everywhere else, is becom-
ing more unpopular, and its prac-
tice is passing into disuse. Another mode of
punishment, but one which has also
passed into disuse, is that of
solitary confinement.

Prisoners committed for trial or for
punishment are permitted to wear their
clothing in prison, provided it be
not of a gaudy or showy nature; they are not compelled to work
hard; but at their own request or
for their own amusement may be supplied
with work not severe, or they may,

at their own expense, procure any em-
ployment, materials, and tools which the
governor may deem safe and proper.
Provided no bill has been found against
a prisoner, or that upon his trial he has
been acquitted, he is allowed such a
proportion of the amount of his earnings
as the visiting justices deem fit and rea-
sonable. Prisoners of this class are per-
mitted to see their friends on any week-
day without any order, within specified
hours; and their legal adviser at any
reasonable hour. Letters to and from
them are subject to the inspection of the
governor. They are liable, in case of
their being riotous, or disorderly, or be-
ing guilty of a breach of the regulations,
to be confined in separate cells, and be
allowed no other food from the county
than bread and water. (*Regulations for
Prisons in England and Wales*, issued by
the Secretary of State, 1841.)

The application of the separate system
to untried prisoners remains yet to be
carried into more complete operation.
Clerkenwell Prison, Middlesex, has been
taken down, and a new County Gaol,
on the separate system, for the untried
and for prisoners under examination, is
in progress of construction, on an en-
larged site and extended scale.

The disposal of criminals after the ex-
piration of the period of their imprison-
ment is, in England, one of the most diffi-
cult questions connected with punish-
ments, and it is one for the settlement of
which no measures have yet been adopted
or devised. Until this deficiency is sup-
plied, under any system of secondary
punishment whatever, the immense amount
of recommissions which take place in this
country may be expected to continue.
The amount of recommissions is an evi-
dence not merely of the inefficiency of par-
ticular modes of punishment, but probably,
more generally, of the difficulty of find-
ing employment in this country. Mr.
Bentham suggested several means where-
by this object might be met; employ-
ment in the army or navy; the encour-
agement of voluntary emigration to the
colonies; the requiring of security for
good behaviour, with liberty to the surety
to contract for the prisoner's labour; or
a subsidiary establishment for the recep-

itself in the colonies.

Until recently there was no further distinction observed in the discipline of juvenile offenders than by their separate classification from the adults in the hulks, in prisons, &c., where they were put to the same or nearly the same routine of duties as the adults; but with the establishment of the Parkhurst Reformatory, in the Isle of Wight, the commencement of systematic improvement in this respect has been made.

The objects sought to be attained at the Parkhurst prison, are the penal correction of boys with a view to deter juvenile offenders generally from the commission of crime, and their moral reformation. The disposal of the boys at Parkhurst on release is a question of some difficulty. Of those liberated since its establishment some have been apprenticed to the trades in which they were educated there; others have been sent to the Refuge for the Destitute, and the Philanthropic Institution, and a considerable number have been sent to New Zealand. Nine years have now (1845) elapsed since the opening of the Parkhurst Prison, and its results have been highly satisfactory. The establishment originally provided for 320 boys, but it has been so materially enlarged as to be capable of accommodating 720.

Provision has also been recently made at the Millbank Prison, Westminster, for the probationary confinement of 260 youths, from 16 to 20 years of age. There is now sufficient provision for juvenile transports; but further establishments, on the reformatory plan, are still required for those boys who from their tender age and small size are unfit to be

ling to the management and discipline of such places of confinement, and to the Secretary of State a Report on.

The Tenth Report of the Inspector of Prisons for the House of Commons, dated August 8, 1845, and on prison discipline and management, has been generally improved; the success has attended the application of the separate system, "by which they observe, "we are convinced prevalence of crime can be as the morals and habits of the prison be permanently amended;" that this system, the health as well as the character of the prisoners have improved, and the number of prisoners greatly diminished; and especially suitable for persons who ought neither to be exposed to the contamination of associating with other prisoners nor subjected to tating regulations of the silent. The inspectors object in very terms to tread-wheel labour, as it is exposed to the formation of bad habits of useful labour, which it is aimed at in prison discipline than compulsory labour for the purpose of punishment. The Report that a great reduction has taken place in the number of debtors committed to prison, which has been in consequence of the act (7 and 8 Vict. c. 96) in the law of insolvency, which in operation August 9, 1844. For in the Debtors' Prison, for Lord Middlesex, the number committed between August 9, 1843, and August 9, 1844, was 2,529; whilst between August 9, 1844, and August 9, 1845, the

only 656, showing a decrease of 52 per cent. The Inspectors recommended urgently the formation of district prisons for juvenile offenders, where they may be kept apart from the contamination of the common gaols. As exceptions to the general improvement which has taken place in prison management and discipline, the Inspectors state that no improvements have been effected in the gaols of the county of Bedford; and in reference to the prisons of the City of London they say, "We are compelled, in an imperative sense of duty, to advert, in terms of decided condemnation, to the deplorable condition of the prisons of the City of London—Newgate, Giltspur Street Compter, and the City Bridewell, in which the master-evil of gaol association, and consequent contamination, still continues to operate directly to the encouragement of crime." . . . "We have often expressed our opinion with reference to this subject, and we shall not fail to send our protest against the prisons of the City of London, until we see substantial," &c.

The Tenth Report of the Inspectors of Prisons for the Northern and Eastern District, which is dated February 20, 1845, states that a very material decrease has taken place in the criminal population of the district during the years 1844 & 1845; and that the prisons continue in a state of improvement. The Inspector remarks, that in consequence of the passing of the 8 and 9 Vict., c. 127, which shortens the imprisonment, for short time, of debtors who have contracted their debts under fraudulent circumstances, there has been some increase in the number of prisoners committed on this account.

As to the great reduction in the number of debtors in consequence of the 7 and 8 Vict., c. 96, coming into operation, and the increase in the number of debtors committed, as having contracted debts under fraudulent circumstances, in consequence of the passing of the 8 and 9 Vict., c. 127, it will be useful to refer to the remarks under the article *INSOLVENCY*, p. 114, &c. The facts stated by the Inspectors do not in this instance prove that there was any social improvement, be-

cause the number of commitments were diminished under the 7 and 8 Vict., c. 96; the true conclusion is, that a number of dishonest debtors were let out of prison or did not get into prison, and that is all. The increased number of committals of fraudulent debtors under the 8 and 9 Vict., c. 127, confirms this conclusion. It is true that the Inspectors' report merely gives the decrease in the number of imprisoned debtors under 7 and 8 Vict., c. 96, as a fact; but it is possible that some persons might draw the wrong conclusions from this fact.

The Tenth Report of the Inspector of Prisons for the Southern and Western District, which is dated August 4, 1845, states that beneficial alterations are taking place, both in the construction of prisons and in prison discipline, and speaks in terms of approbation of the results of the application of the separate system.

There are several institutions auxiliary to the penal institutions of the country. The institutions referred to are either wholly supported by voluntary contributions, or partly by voluntary contributions and annual parliamentary grants, and their objects are to receive convict youths after they have endured the sentence of the law, as voluntary inmates, and to educate them in suitable branches of knowledge, and in useful trades; or to receive the destitute offspring of adult convicts who have been executed or transported, or are imprisoned for a lengthened period, and to give them the advantages mentioned. In the metropolis there are the Refuge for the Destitute, and the Philanthropic Society's institution.

The Refuge for the Destitute was founded in 1805, and incorporated by Act of Parliament in 1838. It is a place of refuge for young persons of both sexes, discharged from penal confinement; or who, having lost their character by dishonest practices, are unable to procure an honest maintenance. The females in the establishment are employed in washing and in needlework, for which the institution contracts with the public, and in household work. The males are employed in shoemaking, tailoring, and preparing fire-wood for sale.

The Philanthropic Society embraces in

its scheme, besides juvenile criminals, the destitute offspring of criminals. The education given at the Society's institution, in addition to the details at the Refuge, includes the trades of printing, bookbinding, rope and twine-making. To those young men who, after quitting the institution, bring satisfactory testimonials from their masters by whom they have been employed of honesty, sobriety, and steady habits, rewards varying in amount are given at the end of one and two years respectively. This institution is entirely dependent upon voluntary contributions. (*An Account of the Philanthropic Society*, 1842, printed at the Institution.)

The prisons of Scotland were in a state of gross mismanagement when, in 1826, a Committee of the House of Commons was appointed to inquire into the subject. The recommendations of that committee, the appointment of inspectors, and the passing of an act of parliament (2 & 3 Vict. c. 46), by which the burden of maintaining prisons is removed from the royal burghs, and provided for by a general rate upon property, and their management is devolved upon county boards and upon a general board sitting in Edinburgh, have led to some improvements, and paved the way for still greater. This act, which was passed in August, 1839, is to continue in force ten years. Where system can be said to have been attempted in Scotland, it has been one of those which we have noticed in connection with England. The separate system has been for several years in force at Glasgow in respect to prisoners, the duration of whose sentence is six months or under, and, according to the reports of the inspectors of Scotch prisons, with generally good effects, although the construction of the prison in which the system is conducted is not completely favourable. The difficulty of procuring employment on release from prison has however been so great, that lately criminals in confinement at the Glasgow penitentiary, when in prospect of their liberation, have been found to threaten the commission of crimes for which they might again be sent there. Another separate prison has been established at Perth, and the extension of the

system is contemplated by the board of direction in connection with Scotch prisons, provision for the purpose having been made already by parliament.

The Seventh Report of the Board of Directors of Prisons in Scotland is dated February 11, 1846, and gives an account of the proceedings of the Board with relation to the General Prison at Perth, the proceedings with relation to Local Prisons; a statement of Receipts and Expenditure during the year 1845, and an estimate of the funds which will be required for the year 1846.

The gaols of Ireland are regulated by an act of parliament (7 Geo. IV. c. 14), passed in 1826, by which annual reports of the state of the several prisons are required from inspectors of prisons who had been appointed some years previously. From the reports of the inspectors a lamentable picture is to be drawn of the management of the prisons so recently as 1841. Industry appears to have been only partially introduced; classification, where it is attempted, is of the most imperfect description, and lunatics are frequently committed to prison simply as being dangerous to society, of which practice the results are, "that each prison in the kingdom has charge of from five to ten lunatics, and even more, to the great injury of the internal discipline and peace of the establishment, as well as to the poor individuals, as there is no proper accommodation for them, or means of treating the disease with a view to cure." (*Report of the Inspectors of Prisons for Ireland*, 1842, p. 9.)

As to the prisons in the British dependencies, the following authorities may be referred to:—"Resolution recorded by the Government of India on the 23d of October, 1838, after taking into consideration the Report of the Committee on Prison Discipline," Calcutta, 1838; "Report of the Committee on Prison Discipline to the Governor-General of India in Council," January 8, 1838, Calcutta; "Report of Captain J. W. Pringle on Prisons in the West Indies," July, 1837, and as to Lower Canada, the "Report of the Hon. D. Mondelet and J. Nolin, Esquires," Quebec, 1835.

TREASON. (LAW, CRIMINAL.)

TREASURY-TROVE, in legal Latin means *thesaurus*, is a branch off out of the crown of England, and the king or his heirs. Where, or previous records are found the earth or any precious stone, silver or gold, who deposited thence, the property becomes the king by virtue of his prerogative if the owner is known, or not, after the treasure is found, it belongs to him and not to the king.

By a constitution of Richard II. c. 5. § 30, if a man found treasure in his own ground, it is to the finder, and also if he is a place which was once (or once) or religious (owned to him). If a man found treasure in another man's ground, the man gives half to the finder, and a crown of the ground. If he was in the ground of the man, and half, and the finder the law was the same if the thing was to the king, or to the king, or to any other community, then of the Emperor Leo and c. 2. § 15, it is to the man who it was. Gervase says that if the prince or treasurer takes some thing from a person, he is to have the thing as to have become his (see *the Law* c. 10, § 15). The ground shows the Roman description of *thesaurus* of Paulus (*Lib. 1. § 15*). — *Thesaurus* (the name) is deposit of money, of which we speak as to give it to the king, it becomes the king who has become it does not belong to the king, to settle the crown to the king must appear to have been deposited by some one who at the intention of retaining ever thence the intention to give from the circumstances — *thesaurus*, whose the property has to be the king, or as a gold or silver openly placed upon the king's earth — it belongs to the king. In England the possession of the king was the king was originally a capital offence; at

present it is a misdemeanour punishable by fine and imprisonment. (*Blackstone's Commentaries*, vol. 2. p. 304.)

TREASURY, (*the word is derived from* *thesaurus*, p. 304.)

TREASURY, a department of the British government which controls the management, collection, and expenditure of the public revenue. It is the business of another department, the Exchequer, to take care that no issues of public money are made by the Treasury without their being in conformity with the authority specially granted by parliament. When money is to be paid on account of the public service, this is almost always done on the authority of a Treasury warrant; and in other cases the consent of the Treasury is requisite. The Board of Treasury consists of the prime minister and the chancellor of the exchequer. The real office which the premier holds is generally that of first lord of the Treasury. There are also four junior lords, who have usually some to parliament, or have also the very joint secretaries of the Treasury. The departments immediately subservient to the Treasury are the boards of customs, of excise, of stamps and taxes, and the post-office, the various offices in which are to a great extent appointed by the lords of the Treasury; and this constitutes an important part of the patronage of the ministry. The control of the Treasury over the different boards of revenue and other departments is said to be much less complete now than it was fifty years ago. Constitutionally, its authority ought to be paramount. The duties of the lords of Treasury are heavy and multifarious, all exceptional cases in matters relating to the revenue being referred to it. Previous to 1839 the annual parliamentary grant for education was disposed by the Treasury; but from this business, to which it certainly could not pay sufficient attention, it was relieved by the appointment of the committee of Privy Council on Education. The office of the Treasury are in Whitehall. The amount paid in salaries of 1800, and upwards, is about 10,000 £ a year. The First Lord of the Treasury was in 1800, & 1800, the secretary of the Treasury was in 1800.

are accordingly called the contracting parties.

Although a treaty is commonly defined to be an agreement made with one another by two or more governments, it is not necessary that every party to a treaty should always be a sovereign power or an independent political society. Bodies of persons or even individuals, may be empowered to enter into treaties. Thus the English East India Company has the power, and has repeatedly exercised it, of making treaties under certain limitations. But in all such cases this power must be given by the supreme authority in the state to which the contracting party belongs, or, which is the same thing, by the constitution or political system of which it is a member. Treaties then can only be made by sovereign powers, or by parties upon whom the sovereign power has conferred that right. In our constitution, for example, where the sovereign power consists of the king and the parliament, the power of concluding treaties with foreign powers generally belongs to the king. This is the all-important fact for foreign countries or other powers to look to in negotiating and entering into conventions with the English nation: the only party with whom they have to do in such matters is the king, or

well founded, it would seem to be a reasonable one; and it could not be proved not to be founded in a case in which it was urged. It would appear therefore to be either unfair to hold the negotiator's plea to be the real conclusion of a treaty, or useless, if the plea that he had no powers were to be allowed. As to the words urged in statement of the conditions he had made; unfair, if they were not to be permitted. As to notwithstanding some writers of nations (De Martens, for example) have contended that a treaty, when speaking, valid from the moment being signed, that is not the doctrine generally maintained; and as the practice now completely established always adhered to is for ratification of the treaty to be exchanged by the contracting parties before it is in operation. And there are many of states declining to ratify or to execute treaties which have been signed by accredited representatives.

A treaty, when made, is in force so long as the contracting parties choose to observe it; for as these parties are sovereign powers, there is no superior authority to enforce the execution of the treaty. Should it

commercial intercourse. Such are numerous expedients for effecting may generally be done better nation, which has most to give us to take most, relaxing its own laws; which is what Great is doing now. A striking instance of the effect of Great Britain's is contained in the 'Empire of Saxony.'

A full account of the printed collection of treaties is contained in the *Revue périodique sur les différents de Traité publiés jusqu'à ce jour*, 3-72, in the first volume of *général au Recueil des Préludes*, &c., by De Martens, 2vo., n. 1802. All preceding general are superseded by the great Du Mont and Roussot, entitled *Universal Diplomatique du Droit*, &c., contained au *Recueil des d'alliance, de paix, de trêve, de de commerce, d'échange, de et de garantie, de toutes les ans*, &c., . . . depuis le règne de Charlemagne jusqu'à &c., &c. The original work is voluminous, to which there is a supplementary five volumes which appeared

edition of Du Mont and Roussot completed and brought down most day by the late George de Martens, professor of the *History and Nations at Göttingen*, &c., in their work entitled *des Traité d'Alliance*, &c. des et d'Etats de l'Europe, &c., &c., volumes of which, in 2vo., were at Göttingen in 1790. Various are have been since published, and work of de Martens complete volumes.

are separate collections of treaties in nearly all the countries, resembling for the most part of nations to which the country has any, and which therefore form of its connection with foreign Most of these collections also De has incorporated in the discourse referred to. The most important collection is that entitled *Nymus Fudus, Conventiones,*

Litteræ, ejusdemque generis Acta Publica, inter Reges Angliæ et alios quorundam Imperatores, reges, &c., in 20 volumes, folio, 1704-1725. It includes the period from A.D. 1101 to 1624. A second edition of the first 17 volumes (the last of which is occupied with an index to those that precede) was published at London, under the care of George Holmes, in 1727; a third, including the whole 20 volumes in 16, and with considerable additions and improvements, was brought out at the Hague in 1759; and a fourth, augmented by many new documents, has been in part printed, under the direction of the late Record Commission. Various collections have been published since that of Nymus. The latest general collection of treaties which has appeared in this country is by George Chisholm, 2 vols. 8vo., London, 1795, which is a useful work. The new treaties and other state papers are annually published by the Foreign Office; and there is a very convenient work, entitled 'A Complete Collection of Treaties, &c., at present subsisting between Great Britain and Foreign Powers, so far as they relate to Commerce and Navigation, to the repression and abolition of the Slave Trade, and to the Privileges and Interests of the Subjects of the high contracting Parties,' compiled from authentic documents by Lewis Herdell, Esq., Librarian and Keeper of the papers, Foreign Office, 2 vols. 8vo., London, 1840.

For an enumeration of the principal works on the subject of treaties, and references to the passages in the writers on public law in which the subject is considered, the reader may consult the Introduction to De Martens's '*Précis du Droit des Gens Moderne de l'Europe, fondé sur les Traité et l'Usage*,' 2 vols. 8vo., Paris, 1831; vol. I, pp. 102-106, 208-270, 316; and II, 22-23, 63-69, 113, 215-234, 291-302. There is a very useful work by De Martens, entitled '*Cours Diplomatique*,' 2 vols. 8vo., Berlin, 1801; of which the first two volumes (entitled separately '*Guide Diplomatique*') contain an account of the principal laws of the powers of Europe and of the United States of America, relating to commerce and the rights of navigation in open seas.

lized Nations, with Notices of the Wars and other Events with which they are connected, from the beginning of the fourteenth century to 1830.'

TRIAL. [LAW, CRIMINAL.]

TRINITY HOUSE OF DEPTFORD STROND, THE CORPORATION OF—its full title is, 'The Master, Wardens, and Assistants of the Guild, Fraternity, or Brotherhood of the most Glorious and Undivided Trinity, and of Saint Clement, in the parish of Deptford Strond, in the county of Kent'—an institution to whose members is intrusted the management of some of the most important interests of the seamen and shipping of England. The earlier records, together with the house of the corporation, were destroyed by fire in 1714, so that the origin of the institution can only now be inferred from usage and the occasional mention of its purposes in documents of a later period. It is probable that with Henry VII. originated the scheme, afterwards carried into effect by his son Henry VIII., of forming efficient navy and admiralty boards, which then first became a separate branch of public service. During the reign of Henry VIII. the arsenals at Woolwich and Deptford were founded; and the Deptford-yard establishment was subsequently placed under the direction of the

ternity of themselves and other par well men as women, in the parish of Deptford Strond, in our ew Kent." The brethren are by the charter empowered from time to elect one master, four wardens, as assistants, to govern and over guild, and have the custody of the and possessions thereof, and have rity to admit natural-born sulge the fraternity, and to communicate amongst themselves as others upon the government of the and all articles concerning the se art of mariners, and make laws, the increase and relief of the sh and punish those offending again laws; collect penalties, arrest or the persons or ships of offenders, ing to the laws and customs of h or of the court of Admiralty. T ter also grants to the corporation ties, franchises, and privileges wh predecessors the shipmen or mar England ever enjoyed.

In the 8th year of the reign of beth, an act was passed enabling corporation to preserve antient sea- erect beacons, marks, and signs sea, and to grant licences to s during the intervals of their engs to ply for hire as watermen on ti

coming into or being in the Thames, has the right to erect and place beacons, marks, and signs for the sea, or on the shores, coasts, uplands, or ends near it, and besought her to give all powers respecting these matters to him. And it then proceeds to grant him and all fees relating to them in the same manner to the corporation for

James II. granted the Trinity House a charter, the one now in force, in the year of his reign. It recites the charter granted and declares it to be a corporation, and that for the future it shall consist of one master, one deputy master, four wardens, and deputy wardens, eight assistants, and deputy assistants, eighteen elder brethren, and a clerk. The master noted by the charter was Pepys, then secretary to the admiralty. It determines the mode of election of those officers, their continuance in office, and the mode of removing them from it, if necessary; declares that all seamen and mariners signing to the guild shall be younger brethren. It directs the masters and brethren to examine such boys of Christ's Hospital as shall be willing to become apprentices, and to apprentice them to commanders of ships. It also enables them to appoint and license all pilots into and out of the Thames, and prohibits under penalty all other persons from exercising that office; it also authorises the corporation to settle rates of pilotage, &c., to the courts, &c. to punish seamen, deserters, &c., and make laws as to their sub-matters not inconsistent with the laws of the kingdom. It also contains many provisions directed to the object of keeping the navigation of the channels secret from foreigners, and renders the officers of the corporation liable to attend when required by the king's bidding. Since that time several acts of parliament have been passed for the purpose of authorising the Trinity House to regulate matters connected with the pilotage, &c., of vessels. The various provisions in matters of pilotage under the management of the corporation were repealed by the 6 Geo. 3. c. 125, entitled "An Act for the Amendment of the Law respecting Pilots

and Pilotage, and also for the better Preservation of floating Lights, Buoys, and Beacons," which recites the extent of the jurisdiction of the Trinity House in regard to pilots to be upon the river Thames, through the North Channel, to or by Orfordness, and round the Long Sand Head, or through the Queen's Channel, the South Channel, or other channels into the Downs, and from and by Orfordness and up the North Channel, and up the rivers Thames and Medway, and the several creeks and channels belonging or running into the same; and contains a variety of minute regulations respecting the examination, licensing, and employment of pilots, the rates of pilotage, provisions for decayed pilots, the protection of buoys, &c. At present, however, besides those under the jurisdiction of the Trinity House and of the lord warden of the Cinque Ports, many independent pilotage establishments exist in various parts of the kingdom; but the expediency of subjecting all these to the uniform management of the Trinity House has been felt for some time past. The inconvenience resulting from the exercise of similar authorities vested in the hands of different parties had been felt with regard to the lighthouses on the coast, several of which had been vested in private hands by the crown; while some had been in times past leased out by the corporation itself, the lights in both instances being found to be conducted probably rather with a view to private interest than public utility. By an Act therefore of the 6 & 7 Wm. IV. c. 79, passed "in order to the attainment of uniformity of system in the management of lighthouses, and the reduction and equalization of the tolls payable in respect thereof," provision was made for vesting all the lighthouses and lights on the coasts of England in the corporation of Trinity House, and placing those of Scotland and Ireland under their supervision. Under this Act all the interest of the crown in the lighthouses possessed by his Majesty was vested in the corporation in consideration of 300,000*l.* allowed to the Commissioners of Crown Land Revenue for the same; and the corporation were empowered to buy up

the interests of the various lessees of the crown and of the corporation, as well as to purchase the other lighthouses from the proprietors of them, subject, in case of dispute, to the assessment of a jury. Under this Act purchases have been made by the corporation of the whole of the lighthouses not before possessed by that body, the amount expended for which purpose is near a million of money.

The annual revenue of the corporation is very considerable, and is derived from tolls paid in respect of shipping, which receives benefit from the lights, beacons, and buoys, and from the ballast supplied. The ballast is raised from such parts of the bed of the river as it is expedient to deepen, by machinery attached to vessels, and worked partly by the power of steam and partly by manual labour. The remainder of the revenue proceeds from lands, stock, &c., held by the corporation, partly by purchase, partly from legacies, &c., and donations of individuals. The whole is employed upon the necessary expenses of the corporation in constructing and maintaining their lighthouses and lights, beacons and buoys, and the buildings and vessels belonging to the corporation; in paying the necessary officers of their several establishments, and in providing relief for decayed seamen and ballastmen, their widows, &c. Many almshouses have also at various times been erected, which are maintained from the same funds. The present house of the corporation is on Tower Hill; the Trinity House was formerly in Water Lane, where it was twice destroyed by fire. There are thirty-one Elder Brethren. The Younger Brethren (who are unlimited in number) are or have been commanders of merchant-ships. Neither the honorary members nor the Younger Brethren derive any pecuniary advantage from their connection with the corporation. King William IV. was master at the time of his accession to the throne. Formerly, according to Stowe, sea-causes were tried by the Brethren, and their opinions were certified to the common-law courts and courts of admiralty, such cases being referred to them for that purpose. This is not the practice at present; but two of the Elder Brethren now sit as assistants

to the judge in the court of admiralty in almost all cases where any question of navigation is likely to arise. The various duties of the corporation are parcelled out among the wardens and different committees appointed for the purpose of discharging the same. One of the most important of these is the Committee of Examiners, before whom all masters of vessels in the navy, as well as pilots, undergo an examination. The deputy-master and Elder Brethren are employed on voyages of inspection of their lighthouses and lights, beacons and buoys, and unfrequently in most trying weather all seasons; and they are also often engaged in making surveys, &c., on the coast, and reports on such matters of maritime character as are referred to them by the government. The sums paid to the deputy-master and Elder Brethren for their services are—to the former 500*l.* per annum, and 100*l.* further as the chairman of all committees, and to each of the Elder Brethren 300*l.* per annum.

TRINODA NECESKITAS. The term, in Anglo-Saxon times, signified for three services due to the king in respect of tenures of lands in England for the repair of bridges, the building of fortresses, and expeditions against his enemies. All the lands within the realm were bound to contribute to these three emergencies, on the principle of *belli necessitas* for general conveniences of safety; and for this reason every man's estate was subject to the *trinoda necessitas*, whatever other immunities he might enjoy. Even in royal grants to the Church of privileges and exemptions from public services, the right of requiring contribution for these purposes was almost always reserved to the king. (*Selden Janus Anglorum*, l. 42; *Cowell's Interpreter*, ad vocem.)

TRIPLE ALLIANCE means a contract entered into by a treaty between three different powers, by which each of the contracting parties, by contributing its share to the execution of it, is entitled to a proportionate share of the advantages which may be derived from it. Such a treaty may be concluded either for defensive purposes, when each power engages itself to assist the other,

be others in case of attack; or it may entered into for an offensive object, as the contracting powers engage to menace and carry on a war against each party. It has been discussed by real writers on international law, other two of the three contracting powers have a right, after a triple alliance or treaty has been concluded among them, to enter into separate stipulations which the third party does not participate in and is not privy to. This question never been fairly settled, like many or intricate questions in that obscure realm of jurisprudence, and in case of doubt, the strongest hand would establish and maintain its own particular claim. Martens, however, is of opinion that no separate stipulations can be entered into without the consent of all parties, more or more, and that this doctrine is recognised by all civilised nations. Even allied by a treaty may in fact be considered as partners, who as such can enter into any agreements or treaties with other parties, without these others becoming participators in the first treaty. For instance, this was the case before late war, which resulted in the defeat of Napoleon's empire. Russia, Prussia concluded a treaty of alliance, offensive and defensive, at Kalish, which Austria afterwards joined; and this triple alliance, or partnership, entered afterwards as such into treaties under various conditions with Great Britain, Sweden, almost all European powers, without these states however becoming parties to original triple alliance.

TRUCK SYSTEM. **TRUCK ACT.** *Truck*, which means exchange or barter, came to be appropriated to signify payment of wages of labour in goods, not in money. By the truck-system meant this mode of paying wages, together with the mass of its tendencies and evils. The Truck Act, 1 & 2 Wm. IV. c. 36, 37, is an act passed in 1831, which repeating all the previous acts passed for the same purpose, provided more and more stringently for the prohibition of payment of wages in truck the departments of industry therein mentioned. The wages of agricultural labourers and domestic servants are ex-

empted from the operation of the act. The evidence published in the Report of the Select Committee of the House of Commons appointed in the session (1842) "to enquire into the operation of the law which prohibits the payment of wages in goods, or otherwise than in the current coin of the realm, and into the alleged violations and defects of the existing enactments," shows that, notwithstanding the Truck Act, the truck system is still in extensive operation in mills, factories, iron-works, collieries, and stone-quarries in the kingdom, and abundantly illustrates the evil tendencies of the system. These evil tendencies will be found also ably explained in the debates in parliament to which the introduction of the Truck Act gave rise in the years 1830 and 1831, and especially in the speeches of Mr. Littleton (now Lord Hatherton), the author of the act, Mr. Herries, and Mr. Huskisson.

It is to be observed, in the outset, that the chief part of the evil of what is called the truck-system is incidental, and not essential to the payment of wages in truck, and arises out of the power of the master over the workman, which enables the former to use this mode of paying wages to defraud and oppress the latter. A master may pay the wages of his workmen wholly or in part in truck, in articles of food, clothing, &c., either by agreement or with only the understood consent of his workmen; and if he supply these articles at prices no higher than those at which they are to be procured elsewhere, and study to meet the various wants of the workmen and their families, the utmost harm that can result is the loss to the workmen of the moral and economical lessons which the disbursement by themselves of weekly money-wages is fitted to supply, and the interference with the business and profits of neighbouring retail shopkeepers; and there will always in such cases be some advantage to act against these, so far as they go, evil results. Where the truck-system acts beneficially, it is owing entirely to the justice and benevolence of the individual truck-masters. On the character of the master everything depends. In the hands of masters of opposite character, and

under circumstances, whether of scarcity of employment, of isolated situation, or of combination among masters in the same business, or through an extensive district, which place the workman more or less at the mercy of his employer, the payment of wages in truck may be, and continually has been, and is still extensively, used for the defrauding and oppressing of workmen.

The following is a summary of the Truck Act, often known as Mr. Littleton's Act, which was passed in 1831. It declares all contracts for hiring of the artificers afterwards enumerated, by which wages are made payable wholly or in part otherwise than in the current coin of the realm, or which contain regulations as to the expenditure of wages, to be illegal, null, and void. All payment of wages is to be in money entire; and any payment of wages in goods is declared illegal. Wages which have been paid otherwise than in the current coin of the realm are made recoverable; and in an action brought for the recovery of wages, no set-off is to be allowed for goods given in payment of wages, or for goods sold at any shop in which the employer has an interest. Employers are denied an action in return against artificers for goods which have been supplied in payment of wages. If workmen or their wives or children become chargeable to the parish, overseers may recover from their employers wages which have been earned within three months previous, and have not been paid in money. The penalty on employers making the illegal contracts or illegal payments of wages, to be for the first offence a sum not greater than 10*l.* nor less than 5*l.*; for the second a sum not greater than 20*l.*, nor less than 10*l.*; and the third offence is declared a misdemeanour; and the employer who has been convicted, to be punishable by fine within the discretion of the convicting magistrates, but not in a sum greater than 100*l.* The convicting justices are empowered to award a portion of the penalty, which shall never exceed 20*l.*, to the informer. The penalties may be sued for and recovered by any one before two justices of the peace having jurisdiction in the county, riding, city, or place

within which the offence has been committed. No justice of the peace being engaged in any of the trades or manufactures enumerated in the act, or the father, son, or brother of such person, shall act as a justice of the peace under this act; and provision is made for county magistrates taking the place of borough magistrates thus disqualified. Justices are empowered to compel attendance of witnesses. Power is given to levy the penalties by distress. A member of a partnership is not liable personally for the offence of his partner, but distress may be made on the partnership property. The 19th clause thus enumerates the artificers to whom the act relates:—"artificers employed in or about the making, casting, converting, or manufacturing of iron or steel, or any parts, branches, or processes thereof, or in or about the working or getting of stone, salt, or clay; or in or about the making or preparing of salt, bricks, tiles, or quarries; or in or about the making or manufacturing of any kinds of nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges, or any other articles or hardwares made of iron or steel, or of iron and steel combined, or of any plated articles of cutlery, or of any goods or wares made of brass, tin, lead, pewter, or other metal; or of any japanned goods or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dyeing, printing, or otherwise preparing of any woollen, worsted, yarn, stuff, jersey, linen, flannel, cloth, serge, cotton, leather, furs, hamp, flax, mohair, or silk manufactures; or in or about any manufactures whatsoever made of the said last-mentioned materials, whether the same be or be not mixed one with another, or in or about the making or otherwise preparing, ornamenting, or finishing of any glass, porcelain, china, or earthenware whatsoever; or any parts, branches, or processes thereof, or any materials used in any of such last-mentioned trades or employments; or in or about the making or preparing of bone, thread, silk, or cotton-lace, or of lace made of any mixed materials." Domestic servants and servants in busi-

dry are exempted from the act. The clause declares that nothing in the shall prevent the supplying to artists of medicine or medical attendance, fuel, materials, tools or implements to used in his trade or occupation, if a sex; or of hay, corn, or other proven- to be consumed by any horse or beast burden, or the letting to any artificer whole or part of any tenement, or the plying of victuals dressed under the of any employer and there consumed; making deduction of wages on any the above accounts, or on account of any advanced," provided always that h stoppage or deduction shall not ex- the real and true value of such fuel, terials, tools, implements, hay, corn, l provender, and shall not be in any e made from the wages of such arti- r unless the agreement or contract for h stoppage or deduction shall be in iting and signed by such artificer." e interpretation clause (25th) gives a et extensive meaning to the word con- e: "Any agreement, understanding, rice, contrivance, collusion, or arrange- nt whatsoever on the subject of wages, ether written or oral, whether direct indirect, to which the employer and ificer are parties or are assenting, or hich they are mutually bound to h other, or whereby either of them ll have endeavoured to impose an ligation on the other."

Such are the provisions of the Truck ct. Well adapted, as it would appear, the purpose of protecting the work- n against this species of oppression by master, it is yet extensively violated d evaded.

TRUST AND TRUSTEE. A trust, ich is in fact a new name given to a e, is defined by Lord Coke in the words ployed by him for the definition of a e: "A confidence reposed in some er, not issuing out of the land, but as ing collateral, annexed in privity to e estate of the land, and to the person eching the land, for which *cestui que e* has no remedy but by *subpana* in *ancientry*," (Co. Litt., 279 b.) A trustee he who undertakes to discharge a trust; d a *cestui que trust*, is the person who entitled to the benefit of a trust.

Owing to the settlements made upon marriage, and the dispositions of property made by will, a great amount of property is in the hands of persons who hold it in trust for certain purposes defined by the instruments which create the trusts. There are also trusts for charitable purposes and others. The law relating to trusts is accordingly implicated with the law of property, and it also contains the rules as to the duties and powers of trustees, both with reference to the *cestui que trusts* and other persons. The Court of Chancery has the sole jurisdiction in trusts.

Trusts may be created either by deed or by testament. The Roman Fidei-commissum was only created by testa- ment, and it was a testamentary disposi- tion by which the testator gave some- thing to one person, and imposed on him the duty of transferring it to another. It is stated that there were no legal means of compelling the discharge of this duty till the time of Augustus, who gave the consuls jurisdiction in Fidei commissa. Under Claudius pretors were appointed to exercise jurisdiction in Fidei com- missa.

TURBARY. [COMMON, RIGHTS OF.]
TURKEY COMPANY. [JOINT STOCK COMPANIES.]

TURNPIKE TRUSTS. Turnpike-roads are a peculiar species of highways placed by the authority of acts of par- liament under the management of trustees or commissioners, who are invested with certain powers for the construction, management, and repair of such roads.

Besides the various local acts, there are several acts of parliament called General Turnpike Acts, the provisions of which extend and apply to all existing and subsequent local acts. The subsist- ing enactments upon this subject are con- tained in 5 Geo. IV. c. 126, which repeals former General Turnpike Acts; 4 Geo. IV. c. 16, c. 35, c. 93; 5 Geo. IV. c. 69; 7 & 8 Geo. IV. c. 24; 9 Geo. IV. c. 77; 1 & 2 Wm. IV. c. 25; 2 & 3 Wm. IV. c. 124; 3 & 4 Wm. IV. c. 80; 4 & 5 Wm. IV. c. 81; and 5 & 6 Wm. IV. c. 15, c. 52. The General Highway Act (5 & 6 Wm. IV. c. 50) also contains certain pro- visions applicable to turnpike-roads; but,

by the 113th section, does not extend to them except where expressly mentioned.

The trustees of turnpike-roads consist of persons nominated for that purpose in the Local Acts, who must be persons possessed of a certain property qualification, and of the justices of peace of the county or counties through which the roads pass; but all persons who are contractors or otherwise personally interested in the roads are disqualified from being trustees. (3 Geo. IV. c. 126, ss. 61, 62, *et seq.*) They are exempt from personal liability for acts done in pursuance of their powers, and may sue and be sued in the name of their clerk. (7 & 8 Geo. IV. c. 24, ss. 2 & 3; 3 Geo. IV. c. 126, s. 74.)

For the purpose of providing the necessary funds for making and maintaining the roads under their charge, trustees are usually empowered to receive moneys by way of subscription, upon which interest is payable to the subscribers out of the produce of the tolls which the trustees are by the local acts empowered to levy upon persons using the roads. Power is also given them to borrow money upon mortgage of the tolls. (3 Geo. IV. c. 126, s. 81.)

The enactments of the General Highway Act (5 & 6 Wm. IV. c. 50, s. 94), relating to summary proceedings before justices to compel repairs of highways, extend the jurisdiction of the justices to turnpike officers, where the highway out of repair is part of a turnpike-road; and while the liability to statute labour existed, it was exigible as well in respect of turnpike-roads as other highways; but the obligation of statute labour seems to be now entirely abolished by the repeal, in the 5 & 6 Wm. IV. c. 50, of the statutes under which statute labour was compounded for.

The amounts of toll exigible on any turnpike-road are regulated by the table of tolls which is contained in the local act by which the trust is constituted, and no tolls can be charged except such as are given by clear and unambiguous language in the Act; and there are various cases of exceptions.

Tolls upon turnpike-roads are in most cases made payable once a day only at

any one gate, and payment at one gate generally gives exemption from payment at other gates within a certain distance. Post-horses having passed through any gate may return toll-free before six o'clock in the morning of the following day, and when horses, having passed through a gate, return the same day or within eight hours, drawing a carriage, the toll paid on the horses is to be deducted. (3 Geo. IV. c. 126, ss. 20, 30.)

The General Turnpike Acts contain various provisions regulating the weights to be allowed to carriages passing along turnpike-roads, and imposing additional tolls for overweight, and also provisions regulating the amount of toll leviable upon waggons and carts, depending upon the construction, breadth, and size of their wheels. (3 Geo. IV. ss. 7, 3, &c.; 4 Geo. IV. c. 95, ss. 2, 5, &c.)

Trustees are enabled to erect toll-gates and toll-houses, the property in which is vested in them, and are required to put up at every toll-gate a table of the tolls leviable thereat, and to provide tickets denoting payment of toll to be delivered to persons paying the same. (3 Geo. IV. c. 77, s. 3, &c.; 3 Geo. IV. c. 126, ss. 57, 60; and 4 Geo. IV. c. 95, s. 28.) The remedies for the recovery of tolls, and the penalties for evading them are contained in 3 Geo. IV. c. 126, s. 39, &c.

The trustees of every turnpike-road have power to enter into compo-
for any term not exceeding a year at
time, with any person for tolls payable
at any toll-gates under their manage-
ment. (4 Geo. IV. c. 95, s. 12.) They
may also, though not empowered to do so
by the local act, reduce the tolls leviable
under the authority of the act, and ad-
vance them again to any amount not
exceeding the rates authorised by the
act; provided that where money has
been borrowed on the credit of the tolls,
no reduction shall be made without the
consent of the persons entitled to six-
sixths of the money due. (3 Geo. IV.
c. 126, ss. 43, 44.) Trustees may also
farm out the tolls, though no express
power be given in the local act, for any
term not exceeding three years at a time.
(3 Geo. IV. c. 126, ss. 55, 57, 58; 4 Geo.
IV. c. 95, s. 12, *et seq.*)

neral Turnpike Acts contain provisions with respect to the duties of officers, the proceedings of trustees, the causeways, ditches, and drains, of milestones, the watering for the prevention and removal of nuisances, the marking of roads, and regulations as to drivers, punishment of offenders, the application of penalties, the costs of actions, &c.; all which settlements have been made from the proceeds of the roads for the purpose of shortening the expense of private roads. The objects of the Turnpike Acts require to be attended to in the application of road acts are the appointment of trustees, the number and powers of toll-gates, and the amounts

of tolls. *On Highways*; Burn's *the Peace*, by D'Oyly and art. 'Highways (Turnpike)'.
 1. By the Roman law a male of fourteen, and a female of twelve, were called *Impubes*. A male who was *impubes* was incapable of doing any legal act by which he might be injured; his property was under the care of a tutor, who was so appointed by his office of defending or promoting the interests of the *impubes* in the transaction. The office of the tutor was necessary for the administration of his property. The office of the tutor was *tutela*; and the *impubes*, in respect to his tutor, was called *tutela*. The tutor's business was to administer the property of his *pupillus*, and his acts the legal sanction of the tutor. The tutor's office as tutor was to the property of his *pupillus*, as to his person, was under the custody of his mother, if he was not, we must suppose that he would sometimes have the care of his mother also. When the *pupillus* reached the age of puberty, he had the power of contracting marriage, and of performing legal acts, and was freed from the control of his tutor. But though he had full legal capacity to the age of puberty, it still required some further protection until

he was twenty-five years of age. [CUTATOR.]

A father could appoint by testament a tutor for his male children who were *impubes* and in his power; he could also appoint a tutor for females who were in his power, even if they had attained puberty. He could also appoint a tutor for the wife of a son, who was in his power, and for his grandchildren, unless by his death they should come into the power of their father. A man could also appoint a tutor for his wife, who was in his power, for she stood to him in the legal relation of a daughter; and he could also give her the power of choosing a tutor. The origin of this testamentary power was probably immemorial custom, which was confirmed by the Twelve Tables. Tutors thus appointed were called *dativi*; those who were chosen by a wife under a power given by the husband were *tutores optivi*. If a testator appointed no tutor, the *tutela* was given to the nearest *agnati* by the Twelve Tables; such *tutores* were *legitimi*. If there were no *agnati*, the *tutela* belonged to the *Gentiles* so long as that part of the law (*Jus Gentilitium*) remained in force. When there was no person appointed tutor, and no *legitimus tutor* existed, a tutor was appointed for persons at Rome under the provisions of a *Lex Atilia*, and for persons in the provinces under the provisions of a *Lex Julia et Titia*.

Though a *pupillus* could not do any legal act which should be to his injury, he could enter into contracts which were for his benefit. The tutor's office was defined to consist in doing the necessary acts for the *pupillus*, and interposing or adding the legal authority to his proper acts (*negotia gerere et auctoritatem interponere*: Ulpian *Frag.*, tit. xi., s. 25.) The doing of the necessary acts applied to the case of the *pupillus* being *infans*, that is, under seven years of age, absent, or *lunatic* (*furius*). When the *pupillus* ceased to be *infans*, he could do many acts himself, and the *auctoritas* of the tutor was only necessary to make them legal acts.

A tutor might be removed from his office if he misconducted himself in it.

The pupillus had also an action against him for mismanagement of his property. The tutor was allowed all proper costs and expenses incurred by him in the management of the affairs of the pupillus; and he could recover them by action. Security was required by the praetor from a tutor for the due management of the affairs of a pupillus, unless he was a testamentary tutor, for such tutor was chosen by the testator, and, generally, unless he was appointed by a magistratus, for in such case he had been selected as a proper person.

The tutela of women who were puberes was a peculiar Roman institution, founded on the maxim that a woman could do nothing without the auctoritas of a tutor. But there was this difference between the tutela of pupilli and of women who were puberes: in the case of pupilli the tutor both did the necessary acts, particularly when the pupillus was infans, and gave his auctoritas; in the case of women who were puberes, the tutor only gave his auctoritas.

The Vestal virgins, in virtue of their office, were exempted from tutela. Both libertinae and ingenuae were exempted from it by acquiring the Jus Liberorum, which was conferred by the Lex Julia et Papia Poppaea on women who had a certain number of children. The tutela of a woman was terminated by a marriage by which she came in manum viri; and also by other means.

A woman had no right of action against her tutor as such, for he did not do any act in the administration of her property: he only gave to her acts their legal validity by his auctoritas.

The subject of the Roman tutela is one of considerable extent, and in the case of women it involves some difficult considerations.

TWELVE TABLES. [ROMAN LAW.]

TYRANNY. [TYRANT.]

TYRANT. The words tyrant and tyranny come respectively from the Greek *tyrannos*, *tyrannis* (*τύραννος*, *τυραννίς*) through the Latin. The earliest use of the word *tyrannus* is perhaps in the Homeric hymn to Ares (Mars). It is used by Herodotus and Thucydides, to signify a person who possessed sovereign power

and owed it to usurpation, or who derived it from a person who had obtained such power by usurpation, and who maintained it by force. Pisistratus, who usurped the supreme power at Athens, B.C. 560, was succeeded in it by his eldest son Hipparchus. A Greek tyrant who obtained sovereign power was a monarch in the proper sense of that term. [MONARCH.] If he acquired power which was somewhat less than sovereign, he was not monarch; but in either case he would perhaps be called tyrant, and accordingly the word does not express with accuracy the degree of political power, but it rather expresses the mode of acquisition, or refers to its originally illegal origin. The word, as used by the older Greek writers, did not carry with it any notion of blame: it simply denoted a person possessed of such political power as above mentioned, whether he used it well or ill. Many so-called tyrants were popular, and were men of letters, and patrons of literature and art. They might appropriately be called kings or princes in the modern acceptation of those terms, except perhaps that the uncertainty of their tenure of power and the want of a recognised hereditary succession in the tyranny, or a regular mode of succeeding to it, would render the application of any modern name inappropriate.

In some passages in Herodotus (ii. 13, &c.; vi. 23, &c.; vii. 165) the words monarch and tyrant are used as synonymous to express an individual who possessed sovereign power; and in one instance at least, vi. 23, 24) he calls the same person king (*basileus*) and monarch (*monarchos*). Aristotle (*Polit.* iii. 7), after stating that a polity or government must either be in the hands of one or of a few, or of the many, adds that we are accustomed to call a monarchy which has regard to the interests of all members of the state kingship (*basileia*); and that a monarchy which has regard only to the interests of the monarch is a tyranny. In the case of Miltiades, who became tyrant of the Thracian Chersonesus, Nepos (*Miltiad.*) remarks that "all persons are considered and called tyrants who enjoy leading power in a state which has once been free." This definition seems to express pretty clearly the old Greek notion of a

but it leaves out of consideration the in which the power was ac-

Seneca remarks that Miltiades had "Tyrannus sed justus," "a tyrant in constitutional form" (1), for he had been elected by the

Accordingly, he says in another place had the dignity or rank of king the name. This is consistent Xenodorus (vi, 35), who says that the made Miltiades tyrant (*tyrannus* was).

Of the Greek tyrannies lasted long, conduct of those who held this was generally such as to attach in one of these an odious significance word tyrant; but it does not express when this change in the signification of the word was introduced. Of the old Greek tyrannies were in part by the influence of the constitution of which was hostile to monarchy and democracy. Head of tyrannies so called among others in the time of Philip and Demetrius. It was, according to the example of Isocrates, one of the great of Eragoras, tyrant of Cyprus, that of himself from a private station rank of tyrant (*tyrannus*), which he in another place as the acquisition kingship. (*Long, Encom.*, c. 25,

Roman writers often use tyrannus by equivalent to king, especially Cicero complex dominus and is, thereby intending to use tyrant in a bad sense, which was perhaps the common conception of the word the Romans in his time. Seneca to refer to the original sense of tyrant when he says, "A tyrant is to be killed from a king (*rex*) by his father, and not by the name; for Dionysius elder (who was called a tyrant) better man than many kings; and Sulla may be appropriately called it, for he only ceased from slaughter he had no more enemies to kill." (*De Lex.*, "Tyrannus.") Accordingly, a man might be called tyrant being a cruel governor, for these instances of persons so called who of their power with moderation; a man who had not the title of

tyrant might be called tyrant on account of his cruelty. It seems as if Seneca was trying to distinguish the popular use of tyrant in his time from its earlier historical signification. Trebellianus Pollio has written the 'History of the Thirty Tyrants' who sprung up in the Roman empire in the time of Gallienus and Valerian. These so-called tyrants were not more tyrannical, in the modern sense of the term, than many Roman emperors.

The use of the modern words tyrant, tyranny, tyrannical, has been as vague as that of most other political terms. The term tyrant is properly limited to the government of one man who is sovereign, and the popular application of the term expresses disapprobation of his conduct. Aristotle's definition of tyranny would apply well enough to a modern tyrant; he is a sovereign who looks only to his own interest, or what he considers his own interest, and cares not what he does in order to accomplish his objects. But if he were a wise sovereign, and administered the state solely with a view to his real interest, that would be found in the main to coincide with the interest of the people, and he would not be called a tyrant, though perhaps he would come within Aristotle's definition. But Aristotle's language, though apparently precise, is not so; and he means by a tyrant administering the state for his own interest, that he also administers it to the detriment of the people. As the mass judge of things by their results, a sovereign would now be called tyrannical whose administration should render his people unhappy; at least he would run great risk of having this odious epithet applied to him, whatever was the goodness of his intentions, if he failed to satisfy the people. The word tyrannical is now often applied to acts of governments which are not monarchies; but this is an improper use of the word. We may say that the laws enacted by the sovereign power in Great Britain are sometimes impolitic, unwise, or injurious to the state generally; they may also be sometimes called oppressive; but they cannot with propriety be called tyrannical, though such an expression may be and often is used in the vulgar sense of characterizing a law which for some reason

son the person who uses the term does not like.

U.

UDAL TENURE. The Norwegian term 'Udal,' or 'odel,' appears to be the same as the German 'adel,' or 'noble.' Tenure is an improper name as applied to Udal land, for the land so called in Norway is not held by any tenure, but is free from all services. There is neither superior nor vassal, nor any of the consequences of such feudal relation as exists in many countries in Europe. (*Laing's Norway*, p. 205.)

UMPIRE. [ARBITRATION.]

UNDERWRITER. [SHIPS, p. 706.]

UNFUNDED DEBT. Exchequer bills form the principal part of the unfunded public debt. These bills are issued under the authority of parliament for sums varying from 100*l.* to 1000*l.*, and bear interest. They were first issued in the reign of William III.; and although their amount has since varied greatly at different times, the convenience which they afford to individuals and their advantage to the public have been such as to cause their constant issue. Their convenience to individuals arises from the circumstance of their passing from hand to hand without the necessity of making a formal transfer, of their bearing interest, and of their not being subject to such violent fluctuations as sometimes occur in the prices of the funded debt. This comparative steadiness in value is caused by the option periodically given to the holders to be paid their amount at par, or to exchange them for new bills to which the same advantage is extended; besides this, when a certain limited period has elapsed from the date of their first issue, they may be paid to the government at par in discharge of duties and taxes. The amount of premium that may have been paid at the time of purchase is consequently all that the holder of an exchequer bill risks in return for the interest which accrues during the time that it remains in his possession. The advantage to the public consists in the lower rate of interest which they carry compared with the permanent or funded debt of the na-

tion, to which, however, they must this respect bear some certain proportion. When the price of the public funds is high, the interest upon exchequer bills will be low; and if the funds should be in price so as to afford a much more profitable investment than exchequer bills, the rate of interest upon these bills is raised in order to prevent their passing into the exchequer in discharge of duties, a thing which would embarrass the financial operations of government. When first issued in the reign of William III. the interest borne by exchequer bills was 5*d.* per 100*l.* per diem, being at the rate of 7*l.* 12*s.* 1*d.* per cent. per annum. In the same reign the interest was afterwards lowered to 4*d.* per 100*l.* per diem, or 6*l.* 1*s.* 8*d.* per cent. per annum; and in the following reign the rate was still further reduced to 2*d.* per diem, or 3*l.* 6*s.* 8*d.* per cent. per annum. During the great part of the war from 1793 to 1814, the rate of interest upon these securities was fixed at 3½*d.* per cent. per diem, or 5*l.* 6*s.* 5½*d.* per cent. per annum. In the last-mentioned year the rate has been progressively reduced to 2½*d.* 2*d.* or 1½*d.* per 100*l.* per diem, at which rate they were in the market at the time of the derangement of the currency, which was experienced in the beginning of 1837. Under these circumstances, it was considered important as far as possible to relieve the Bank of England, in which establishment a very large proportion of these securities were then held, and to place it in the most favourable position for affording relief to the commercial classes; and accordingly the rate of interest upon exchequer bills was raised to 2½*d.* per cent. per diem. The last exchequer bills which were issued (in Jan. 1846) bore interest at 1½*d.* per 100*l.* per diem.

In periods of commercial pressure advances have been made to merchants upon the security of goods, by the issue of exchequer bills. A more permanent occasion for their issue, apart from the immediate wants of the government, has been the desire of aiding individuals or private associations in the prosecution of works of public utility, such as canals, roads, &c. In these cases the rate of interest charged to the borrowers is some-

at greater than that borne by the bills, the difference has been applied to defray the expense of management on the part of the public.

The amount of exchequer bills "outstanding and unprovided for" at the end of each of the under-mentioned years was as follows:—

	£.
1836	28,155,150
1838	24,026,050
1840	21,626,350
1842	18,182,100
1844	18,404,500

UNIFORMITY, ACT OF. [BENNETT, p. 240.]

UNIGENITUS BULL. [BULL, &c.]

UNION, IRELAND, SCOTLAND.

REMONS, HOUSE OF, pp. 594, 590; PARLIAMENT, p. 435.]

UNITED STATES OF NORTH

AMERICA, *Government of*. The United

States, at the time of the formation of the

several or Federal government in 1787,

well as at the time of their separation

from Great Britain, 1776, consisted of

seven distinct political communities,—

Massachusetts, New Hampshire, Rhode

Island, Connecticut, New York, New

Jersey, Pennsylvania, Delaware, Mary-

land, Virginia, North Carolina, South

Carolina, and Georgia. The number is

increased to twenty-seven by the

successive additions of the following

States: Vermont, Kentucky, Tennessee,

Ohio, Louisiana, Indiana, Mississippi,

Alabama, Maine, Missouri, Arkansas,

Michigan, and Florida. In the

year 1845 Texas was admitted into the

Union as a State and member thereof.

They formed a Federal Government

designed to defend them from foreign aggression, and

to secure tranquillity at home; to encourage and

to protect commerce; and for a few objects

of internal legislation in which uniformity

among the States was desirable, and

obvious and direct common interest

existed. To the separate States was left

legislation which concerns the law of

property, the punishment of offences, the

administration of justice, and the exercise

of all powers over the territory and the

people except the few which have been

either expressly withdrawn from the States, or delegated to the General government.

Both the General and State governments are essentially democratic. In both it is assumed that the interest of the majority is the proper end of government, and that the wishes of the majority truly indicate that interest.

By the written instrument called the Constitution of the United States, the power of the General government is divided into three branches; the legislative, executive, and judicial.

The legislative power is vested in two

Houses. One, called the House of Repre-

sentatives, is chosen every second year

by those whom the laws of each State

make legal voters. The number of repre-

sentatives is not fixed, but has gradually

increased from 65, in 1789, when the con-

stitution went into operation, to 224 and

two delegates. The two delegates are for

the territories of Wisconsin and Iowa

respectively. The representatives must

be apportioned among the States accord-

ing to their population, deducting two-

fifths of the slaves in the estimate; and

for the purpose of correcting the inequal-

ity of distribution arising from the vari-

ations in the relative numbers of the

States, a census of the inhabitants is to

be taken every ten years, at which time a

new apportionment takes place, and a new

ratio of population to each representative

may be then also adopted, or the former

one be continued. The act of Congress

of 1842 declares that there shall be "one

representative for every 70,000 persons

in each State, and one additional repre-

sentative for each State, having a fraction

greater than one moiety of the said ratio,

computed according to the rule pre-

scribed by the constitution of the United

States."

The Senate consists of two members

from each State, chosen by its legislature,

and consequently the whole number is

now 54. One-third of the members is

elected every second year, so that each

member holds his seat for six years. In

both houses the members are re-eligible.

All acts of legislation require the con-

currence of both Houses, which constitutes

the Congress of the United States. They

offences arising under the constitution and acts of Congress; exercising exclusive legislation in the district of Columbia in which Washington, the seat of the General Government, is situated, and in forts, arsenals, dockyards, and all the territories belonging to the General Government; and the power of admitting new States into the Union.

The Congress is, by the same instrument, prohibited from laying any tax upon exports; from giving a preference to the ports of one State over those of another; from laying any direct tax except according to the number of inhabitants in each State who are represented in Congress; from suspending the writ of *habeas corpus*, except in case of rebellion or invasion; from passing any bill of attainder or *ex post facto* law; from granting, or permitting to be granted, any title of nobility; or from passing any law to restrict the freedom of religion, of speech, or the press.

Congress must assemble at least once in every year, which of late has been on the first Monday in December. The members of both Houses receive eight dollars for each day's attendance on Congress, and also for every 20 miles which they must travel to the seat of Government at Washington, and in their

particular employments at the expense to the injury and oppression of the classes and individuals." Then the Carolina Convention was to the revenue laws of the United States and the verb nullify gave birth to a new word Nullification. The Convention maintained this doctrine maintained that a State, which is a member of the Union, can nullify certain acts of the General Government. The doctrine of nullification was laid down in the following terms: "A State has a right in her sovereign capacity to declare an unconstitutional act of Congress to be null and void, and such declaration is obligatory upon all citizens and conclusive against the Federal Government; which would have the right to enforce its constitutional powers against that of the State." The doctrine of Nullification was discussed at the time in the United States. The objections to it, and the difficulty of its rather impossibility of the practical application of the nullifiers of Carolina, the purpose of getting rid of the laws of the United States, are discussed in an article in the North American Review on Nullification (vol. 36, Jan. 1847).

The executive power is vested in the President, who is commander in

is elected by the two Houses, which must assent unless it is subsequently overruled by two-thirds of each one. He is provided with a ready-made house, and his salary is 25,000 *marks*. He is chosen by a determinate class of electors; the voters in each elect as many electors as are equal to the members which such State sends to the House of Congress. Every State has its own electoral college, and all the electors give their votes on the same day and by ballot. The votes are sent to the President of the Senate. If there is a majority of the electoral college, the election devolves upon the House of Representatives, when all the Representatives of a State give but one vote. The president must be thirty-five years of age, and he is re-eligible for life, though there has been never to elect the president for more than two terms of years each.

His executive business is distributed among four departments; that of the treasury, of the war, and of the navy; the four secretaries of which, with the attorney-general, reside at Washington and compose the president's cabinet council.

The vice-president is chosen at the same time and in the same way as the president, to whose office, if vacated, he succeeds. His only function, in the absence of the president, is to preside over the deliberations of the Senate, in which he has a casting vote, which is given when the votes of the senators are equal. His salary is 8000 dollars.

The judicial power is vested by the constitution in a supreme court, and each State has its own tribunals as Congress may from time to time establish. The supreme court consists of a chief justice and eight associate justices. It sits in Washington.

It has one session annually, which commences on the first Monday in December. The United States are divided into thirteen judicial circuits, in each of which a circuit court is held twice every year, for each State within the circuit, by one of the supreme court assigned to that circuit, and by the district judge of that State or district in which the court

sits. There are also thirty-four district courts, each State containing one, and some of them two; and each of these district courts has a separate judge, with some few exceptions, where one judge presides in several district courts in the same State. The several courts have either original or appellate jurisdiction in all admiralty cases, breaches of the revenue laws, controversies between citizens of different States, or citizens and foreigners; cases affecting ambassadors and other public ministers; and in all cases criminal or civil, in law or equity, arising under the constitution or the laws of the United States. The judges all hold their offices during good behaviour; and their salaries, which vary from 5000 to 10000 dollars, cannot be diminished even by the legislature, during their continuance in office. All public officers are removable by impeachment, and the Senate is the tribunal for the trial of impeachments; but the judgment in these cases extends no further than to removal from office.

The constitution provides for its own amendment, whenever such amendment shall be proposed by two-thirds of both Houses of Congress, or by a convention called on the application of two-thirds of the States; but in either case, the amendment must be ratified by three-fourths of the States to give it effect. There have been twelve amendments in fifty years: ten were made immediately after the constitution went into operation, and were meant to provide some additional security for the protection of the rights of individuals, or of the States; the eleventh was for restricting the liability of a State to be sued in a federal court; and the twelfth altered the mode of electing the president and vice-president.

This instrument also imposes express restrictions on the state governments. They cannot enter into a treaty or alliance; coin money; emit bills of credit,* make anything but gold and silver a legal tender; pass a bill of attainder or ex post

* This phrase is borrowed from the Articles of Confederation of the old Congress. The paper money issued by that body was then so designated.

ative, executive, and judicial powers are separate. In all the legislature consists of two branches; one usually called the senate, and a more numerous branch, which is variously designated.

The time for which the senators are elected varies from one to five years. In the more numerous and popular branch the members are elected annually, except in South Carolina, Tennessee, and Missouri, where they are elected for two years. The number of members in the popular branch varies considerably. The number of the senate is usually from about one-fourth to one-half the number of the other branch.

In all the States the executive power is vested in a governor, who, in some of the States, is assisted by a council. In some he has the power of appointment to state offices; in others, merely the power of nominating persons to his council; but in most States, he has neither the one nor the other. He is chosen by the people in all the States, except in Maryland, Virginia, North and South Carolina, in which he is chosen by the legislature. His term of service varies in the different States from one to four years, and he is in some States re-eligible, and in others not.

The judicial systems are yet more various. In the greatest part the judges

has the sanction of the law. the twelve States lying south of Pennsylvania and the river Ohio, with the States of Missouri and Arkansas. In the other thirteen, slavery still had existence, or has been allowed except as to those who were slaves at the time of the abolition.

The right of suffrage has various restrictions in the different States as to property, residence, and length of ship; but it is now no where limited to an interest in land. In all the States votes are given by ballot, except in Virginia, Kentucky, and Arkansas, where they are given orally. In all the States, lands can be taken in mortgage for debt, in the same way as personal property. The common law of England is the law of every State, so far as it has not been changed by the legislature. Except in Louisiana, where the civil law is in every description have been digested into one code.

The revenues of the several States are according to their population and resources. Some of them, by judicious expenditure on canals and other public improvements by the proceeds of public lands, and other resources, have a sufficient revenue to defray the ordinary expenses of the government without the aid of taxes. In

the support of schools, &c., out of which taxes sometimes and even exceeds the State tax.

On the twenty-seven States which are in the Federal Union, there are areas beyond their limits which are entirely subject to the general government, though they have no participation in its political power. Over these extensive power of Congress is submitted it is so exercised as gradually open for admission into the Union.

They are administered by a government appointed by the federal executive. When, by the progress of the territory, they are deemed fit for it, it is advanced to the second stage of organization. Of late years, the rights of the second stage are conferred on the territory at the time of their creation, and then allowed to elect their own legislature—the executive power being as before—and to send a delegate to Congress, who has the privilege of voting, but not of voting; and lastly, when numbers justify it, and Congress approves, they are made States and added into the Union, and become other States. There are now two territories in the second stage: Oregon and Iowa.

The revenue of the general government from the sale of public land, duties, and the post-office. The produce of the post-office department is absorbed by the expenditure in that department. The sale of public land has for many years a large share. During the three years previous to 1832 there were sold more than 300 acres, the purchase money of was 48,175,100 dollars. But the free issue of the banks afforded temptation and the means to speculations in these lands, and so amount sold much greater than ever been before, or is likely to be.

The produce of the sales of public land was in 1832 less than 4½ millions; in 1839 less than 6½ millions; in 1840 less than 3 millions; in 1841 8½ millions; in 1842 less than 10 millions; in 1843 a little above 2 millions; and in 1844 also a little above 2 millions of dollars.

The public land consists *first* of the lands which, having been once national domain by purchase, have never been sold or ceded by the general government, and of which there are yet large bodies in most of the Western States, and in all the territories; and *secondly*, of those lands in the unsettled western territory, which have been more recently purchased of the Indians. The system adopted by Congress for disposing of these lands is well contrived to facilitate settlements, to prevent disputes about titles or boundaries, and to render extensive purchases by speculators impracticable. The lands are accurately surveyed by the government; and are then laid off into ranges of townships by true meridian lines. Each township is exactly six miles square, and contains of course 36,000 acres. It is divided into 36 sections of a square mile each, which sections are again subdivided into four quarter sections, each of 160 acres, and sometimes into half-quarter and quarter-quarter sections. The space between these squares and the margin of a river, or Indian boundary, is laid off into the smaller parts of a section. When thus laid off, the lands are sold from time to time at public auction, provided they bring the minimum price, which is a dollar and a quarter per acre. Formerly the minimum price was two dollars, and the lands were sold partly on credit; but in 1820, to avoid the present inconvenience and future danger of thus placing the government in the delicate relation of creditor to so many of its citizens, Congress in 1820 reduced the minimum price, and abolished the credit. The public land to which the Indian title has been extinguished, and which was unsold on the 1st January, 1832, was 227,293,884 acres. The business of surveying and disposing of the public lands is managed by a general land-office at Washington, and numerous land-offices distributed among the western states and territories, all which are under the control of the Treasury department.

The customs duties are the chief source of revenue to the United States. The total revenue of the United States for the fiscal year ending June 30, 1844, was

a little more than thirty millions of dollars, with a balance in the Treasury of nearly 10½ millions on the 1st July, 1843. The expenditure for the year ending June 30, 1844, was near thirty-three millions, of which the war department cost above eight millions, and the navy department cost nearly six and a half millions of dollars.

(*Geography of America*, Library of Useful Knowledge; *American Almanac* for 1846.)

UNIVERSITIES are lay corporations, which, since the twelfth century, have had the charge of educating the members of the learned professions throughout Europe and the colonies founded by European states. The three oldest learned institutions to which the name University can with propriety be applied are those of Paris, Bologna, and Salerno.

It is impossible to fix a precise date at which the educational institutions of Paris can be said to have assumed the form and name of a university. As for the name (*universitas*), it was not confined in the middle ages to scientific bodies; it was used in a sense equivalent to our word *corporation*. [UNIVERSITY.] There were "universities of tailors" in those days. It was long before the name obtained its present limited acceptance. The school of Bologna was a '*universitas scholarium*,' that of Paris a '*universitas magistrorum*,' because the former was a corporation of students, the latter of teachers. The oldest printed statutes of the university of Bologna are called '*Statuta et Privilegia almae Universitatis Juristarum Gymnasi Bononiensis*;' and in some universities we find a '*universitas juristarum*' and a '*universitas artistarum*' side by side; from which it appears that '*universitas*' at one time approached nearly to the meaning of our word '*faculty*.' What we now term a university was designated indifferently '*schola*,' '*studium generale*,' or '*gymnasium*.' The term '*academia*' has also been sometimes applied to universities, though academy has now a different meaning.

The oldest document in which the designation '*universitas*' is applied to the university of Paris, is a decretal of Inno-

cent III., about the beginning of the thirteenth century. But as early as 1160 two decretals had been issued by Alexander III., the first of which ordained that in France no person should receive money for permission to teach. The glossa of Vicentinus says, that this prohibition was directed against the chancellor of the university of Paris; and the second decretal alluded to exempted the then rector, Petrus Comestor, from the operation of the first; and much earlier than any legislative provisions of popes or kings we find the foundations of the university laid.

To almost every cathedral and monastery of Europe there had been, from a very early period, attached a school, in which all aspirants to priestly ordination, and such laymen as could afford it, were instructed in the *Trivium* and *Quadrivium*. It appears from the letters of Abelard (died 1142), and from other contemporary sources, that the poorer establishments intrusted the conduct of the school to one of their number called the Scholasticus; and that the wealthier bodies maintained a Scholasticus to instruct the junior pupils in grammar and philosophy, and a Theologus to instruct the more advanced in theology. About the time of Abelard the great concourse of students who flocked to the episcopal school of Paris appears to have rendered it necessary to assemble the two classes of pupils in different localities; the juniors were sent to the church of St. Julian, while the theologians remained in that of Notre Dame. All who had studied a certain time, and undergone certain trials, were entitled to be raised by the rector of the schools to the grade of teachers. This was done by three successive steps. The candidate was first raised to the rank of master, in which he acted for a year as assistant to a doctor (or teacher); then to the rank of bachelors, in which he taught for a year, under the superintendence of his doctor; pupils of his own; lastly, to the grade of independent doctor. The number of students rendered the profession of a teacher at Paris lucrative, and many from all nations embraced it. According to the custom of those unsettled times, they gradually

themselves into a kind of corporation or mutual support. The corporation of the teachers of all the three stood under a rector elected by themselves. According to an agreement entered into in 1206, the rector was by the residents of the four nations, English or German, Picards, Normans. Before this time, in 1200, Augustus had confirmed the election of the rector over all student teachers. The local separation of artists from the theologians would have of little consequence, but for the progress which the Aristotelian philosophy made during and immediately after the life of Abelard. The speculation which studious men were led to by the writings of Aristotle necessarily led them to deal with topics which had not been conceived to lie within the domain of theology. The controversies were frequent and bold attempts were made by individuals to modify the received doctrine of the church, clamours about heresies and persecutions, and counter-persecutions. All these contributed to bring about a tacit compromise between the secular theologians and the admirers of the new philosophy; the former remained in possession of the pulpit and of the theology; the latter confined themselves ostensibly to literature and philosophy, and sought to avoid controversy by rarely overstepping the limits of abstract inquiry. The progress of this tacit agreement may be traced in the writings of the learned from the time of Abelard down to that of Erasmus; it grew up a class of literati, who were called, although many of them were secular scholars. It was the incompatibility of the free spirit of inquiry with the stability of a fixed theology which led to this compromise, that embittered the dispute between the claim of the mendicant orders to establish chairs of theology in the University of Paris about the middle of the thirteenth century. This controversy ended in the secession of the doctors of law from the university, as it had at this time been called, and their instituting themselves into a separate school or faculty. Their example was

followed not long after by the doctors of canon law and medicine, who formed themselves into separate faculties. These faculties consisted exclusively of the actually teaching doctors (*doctores regentes*) of these three branches of knowledge. The masters and bachelors remained members of the university proper, which, from the secession of the theologians, canonists, and doctors of medicine, came in time to be called the Faculty of the Artists. From this period the university consisted of seven bodies or sub-incorporations—the four nations under their procurators, and the three faculties under their deans. The rector was the head of the university; he was elected by the procurators of the old university; no doctor of theology, canon law, or medicine could be elected or take part in the election. At first the rector was chosen by the procurators, but latterly by four electors, specially elected by each nation for that purpose. The *Prévôt* of Paris (so long as that officer retained any authority) was the conservator of the royal privileges in the university; the bishops of Meaux, Beauvais, and Sens, of the papal privileges. In respect to criminal jurisdiction, the university was immediately under the king, till A.D. 1200, when its members were transferred to the episcopal court of Paris; about the middle of the fifteenth century they were transferred to the Parliament of Paris. In regard to civil jurisdiction the University was originally under the bishop; in 1340 it was transferred to the court of the *Prévôt* of Paris; when the Châtelet succeeded to the judicial functions of the *prévôt*, the university was transferred to that court. The rector, with the procurators and deans, formed a court, which had jurisdiction in all complaints against teachers for incompetency or neglect of duty; and against students for disobedience to their teachers, the rector, or the discipline of the university, and in all cases between students, lodging-keepers, booksellers, stationers, &c. From the decisions of the rectorial court there was an appeal to the university, and from it to the Parliament of Paris. Each faculty (that of the artists included), had its own common school. In the faculty of canon-

did not reside in any college had come to be regarded as exceptions from the general custom, and were nicknamed "martinets." The College of the Sorbonne (founded in 1250) was commonly regarded as identical with the theological faculty, because the members of the one were most frequently members of the other also. The promotions however continued to be made by the officers of the university, although the charge of education had been in a great measure engrossed by the colleges. Degrees were conferred in the faculties of theology, canon law, and medicine, by the deans, with the concurrence of the chancellor of the Cathedral of Notre Dame; in the faculty of artists, by the rector, with the concurrence either of the chancellor of Notre Dame or the chancellor of St. Geneviève.

The oldest authentic document relating to the university of Bologna is the privilege granted by the Emperor Frederick I., at Roncaglia, in November, 1158, to all who travel in pursuit of learning, in which the professors of law are mentioned in terms of high encomium. Bologna is not named in this instrument, but history mentions no other law-school as existing at that time. The contents of this privilege are two-fold: foreign scholars are

were usurpations. These circumstances show that the reputation for legal knowledge acquired by the law-teachers of Bologna had proved an introduction to state employments, honours, and emoluments; and this attracted to the university which they taught a large number of the most intelligent and aspiring youth of Europe. The reputation of Bologna was a passport throughout Christendom. The statutes and charters of the University of Bologna are compacts entered into by students for mutual support and defence, and immunities granted them by the popes and emperors. The university of Paris was originally an association of teachers; it was a corporation of students: the university of Bologna originally an association of students, but had repaired from distant lands to themselves of the instruction of celebrated teachers; it was a corporation of students. Disputes between the citizens of the city, and between the students and professors, which occurred in 1214, are the first occasions on which we hear of a rector. From the time of these controversies it appears that students had previously been in the habit of electing the rector, and that this was confirmed to them for the future.

of their own. They called them "philosophi et medicæ," or "arts."

In 1362 Innocent VI. founded a school of theology at Bologna. From that time therefore there were four universities in Bologna: two of law (which were so intimately connected, they are generally spoken of as one), medicine and philosophy, and one of arts. Each of these had its own distinct constitution. That of the university is best known, and agrees in several features with the others. The "universitas" consisted of the students, who were admitted upon payment of twelve soldi entry-money, and obliged to renew annually their oath of obedience to the rector and members of the university. The Bolognese students could neither hold offices in the university nor vote in its assemblies. The foreign students were divided into the *Montani* and *Ultramontani*: the former were divided into seventeen nations, the latter into eighteen. The rector was elected annually from among the students.

His predecessor in office, the *prorector*, and a number of electors, one for each nation. A rector was elected each nation in rotation. The university consisted of at least one representative of each nation: some had two. They were also elected annually a *syndicus*, or their men in courts of law; a *massarius*, or treasurer (chosen among the town bankers); and two *consules*.

The rector claimed exclusive jurisdiction in all civil cases in which one of the parties were students, and in criminal cases in which both were students. The professors were elected by the students, to whose body they were sworn, and all whose privileges they were to defend, except a vote at elections. They were under the jurisdiction of the rector, and he could fine or suspend them. The *Doctor* was conferred by those who previously obtained it: it was conferred the privilege of teaching, and the power of discipline over their own pupils, and the right to vote in the conferring of all the degrees.

At first there were only doctors of civil law: the doctors of canon law were not added until a few years later, and were for a long

time less respected. In the thirteenth century the university began to create doctors of medicine, of grammar, of philosophy and arts, and even of the notarial art. Any student who had studied five years might be licensed by the rector to expound a single title, or if he had studied six years, to expound a whole book of the *Pandects*. He was termed a *licentiate*; and after he had performed his task, he was declared a *baccalaureus*. Salaried professors appear in Bologna for the first time about 1279. The doctors taught in their own houses or in halls hired for the purpose: their method of tuition was by lectures, examinations, and disputations.

The history of the university of Salerno is much more obscure than the histories of the universities of Paris and Bologna. Ordericus Vitalis, whose annals close with the year 1141, speaks of Salerno as a place long eminent for its medical schools. Its most celebrated teacher, Constantine of Carthage (died 1087), was a privy councillor of Louis Guiscard. This school was still flourishing in 1224, when the university of Naples was established. All that can be inferred from these scanty notices of the school of Salerno is, that the scientific study of medicine was making rapid strides about the same time that law began to be more systematically studied, and philosophical and literary pursuits to be regarded as the profession of a class whose members might or might not be priests.

This sketch of the early constitution of the universities of Paris and Bologna will assist a person in acquiring a more exact notion of the original constitution of other universities.

The growth of universities throughout Europe was rapid. Before the Reformation they were established in Italy, France, the Germanic Empire, the Peninsula, Great Britain, and even among the Slavonic nations east of the Germans. There were numerous universities established in Italy previous to the year 1200, besides the three already named, within the limits of the Germanic Empire, which then extended over many provinces now incorporated into France, and over the Netherlands: in Great Brit-

tain; in Spain and Portugal; in Sweden at Upsala in 1476; and at Copenhagen in 1479.

In all of these institutions we recognise the leading features of Paris or Bologna. All of them, apart from the consideration of their academic character, are privileged corporations, with an independent jurisdiction more or less limited, and the power of making bye-laws. In most of them the division of the members of the corporation into nations prevails or did prevail. In all of them the faculties of philosophy (or arts), theology, law (civil and canon), and medicine, are more or less fully developed. Some contain within them all the faculties; some only two or more. Almost all have a faculty of arts, which, even where it is politically the most powerful (as in the university of Paris), is regarded as in a great measure preparatory to, and therefore in its scientific character inferior to the others.

The universities founded after the Reformation adopted the great outlines of the organization of their predecessors: the political incorporation, the privileged jurisdiction and power of making bye-laws, the faculties and modes of conferring degrees which custom had established. But the altered circumstances of society modified considerably their external relations. The same political power was not conceded to universities that had formerly been given to them. The old were restricted in their privileges; the new never received them. The protracted strife between the Romish and Protestant churches also had its effect: universities, though no longer allowed to lay down the law, were cherished as advocates of a party. Roman Catholic and Protestant universities were erected to do battle for their respective creeds. Lastly, other sciences had their practical utility recognised, in the same way as the sciences of law and medicine had theirs at an earlier period. The applications of mathematical science to the purposes of war and navigation had given an impetus to their cultivation: these new practical pursuits never produced a new faculty, but they lent greater importance to the miscellaneous faculty known as the Faculty of Arts. The

number of universities founded in Europe, from the time of the Reformation down to the French Revolution was considerable. They were established in Italy, France, Germany, in the United Provinces of Holland, in Scotland, Ireland (Dublin), in Spain and Portugal, and elsewhere.

Many events concurred during this period to lower universities in the public estimation. The extension of elementary and secondary schools had raised the standard of education among the classes which did not receive a university education. The invention of printing had operated in the same direction. The diminished privileges and restricted jurisdiction of universities had brought them to be regarded merely as schools of a higher order. The increasing number of learned societies raised up a body of non-academical literati, hostile in many instances to the academical; and the public, looking only to the transactions of these societies, forgot that their members were indebted for their training to the universities. The presumptuous spirit of amateur dabbles in science undervalued these institutions; and, in the feverish spirit of innovation which occasioned or accompanied the French Revolution, they too were denounced. In France the old universities have entirely disappeared. In the rest of Europe, as soon as the storms of the Revolution were passed over, they revived; and adapting themselves more to the social necessities of the age, have in many instances started with increased energy on a fresh career of utility.

The present University system in France is peculiar: the expression "Royal University of France" is almost equivalent to that of "national system of education in France." The governing body is the council of public instruction, of which the minister of public instruction is the president. All educational institutions, from elementary schools upwards, are, with half-a-dozen exceptions, under the direction of this body. Under the councillors are inspectors-general of the university, whose office it is to examine all schools and colleges once a year. The educational functions discharged by the

sities in other nations of Europe are fed in twenty-six academies, each of which has a territory of two or more departments allotted to it. The twenty-six academies comprise forty-one royal colleges, and above six hundred professors and teachers. At the head of each academy are a rector, two inspectors, and a council; they have the superintendence of all the schools in their districts. Each academy includes the faculties; but the faculties are not organized in any academy, and some have none. There are six faculties of Roman Catholic theology,—at Aix, Bordeaux, Lyon, Paris, Poitiers, Toulouse; and two of Protestant theology, one Lutheran, at Strasbourg, one Calvinistic, at Montauban, under the academy of Toulouse. There are six faculties of law,—at Aix, Caen, Paris, Grenoble, Poitiers, Rennes, Strasbourg, and Toulouse. There are six faculties of medicine,—at Grenoble, Montpellier, and Moutpellier, with seventeen secondary schools of medicine. And there are seven faculties of literature,—at Aix, Strasbourg, Bordeaux, Toulouse, Dijon, and Besançon. The faculties consist of a variable number of professors, of whom is dean, and a committee of an examine candidates for degrees.

Students sufficiently advanced to study the sciences taught by the faculties are instructed in royal colleges, and are lodged according as they reside within or without the walls.

The universities of Great Britain are Oxford, Cambridge, Durham, London, Andrew's, Glasgow, Aberdeen, Edinburgh, Dublin. In Oxford and Cambridge the colleges have obtained a complete preponderance over the university.

The old university constitution is in some places changed. So great has been the change that many people, and even some learned judges, have erroneously conceived of two corporations as composed of a number of colleges something like a municipal government, whereas the universities are distinct lay corporations, which confer degrees and have various powers; colleges are properly boarding houses and eleemosynary foundations. [COLLEGE.] The earliest charter of privileges for the university of Oxford as a corpora-

tion is said to be the 28th of Henry III., and the first charter granted to the university of Cambridge as a corporation is said to be the 15th of Henry III. James I. in 1603, by diploma dated the 19th of March, granted to the universities of Oxford and Cambridge the power to send each two representatives to the House of Commons. The Dean and Chapter of Durham, by an act of chapter, 28th of April, 1831, established an academical institution in Durham in connection with the cathedral church, which by an act of parliament (2 & 3 Wm. IV.) entitled 'An Act to enable the Dean and Chapter of Durham to appropriate part of the property of their church to the establishment of a university in connection therewith for the advancement of learning,' was confirmed and endowed. In 1837 the university of Durham received a royal charter. The university of London received its first charter from William IV., which Queen Victoria revoked in the first year of her reign, and granted a new charter the 5th of December, 1837. The history of the establishment of this university is given at length in the 'Penny Cyclopaedia,' UNIVERSITY COLLEGE, LONDON; and UNIVERSITY OF LONDON.

As in England and Scotland, the medical and legal professions are in the United States educated principally in distinct schools; and this is the case also in a great measure with the students of theology. Many of the colleges or universities contain only a faculty of arts.

According to the 'American Almanac' for 1846, there were 108 colleges in the United States; 39 medical schools, some of which are connected with colleges or universities; 34 theological schools; and 9 law schools. Most, if not all, of these are incorporated places, and all the colleges grant degrees. But many of these colleges are of very recent date, ill organized, and ill endowed. On the whole, however, the endowments and character of the older colleges in the United States are such as show that the higher branches of learning and science are zealously pursued and honourably supported.

(Savigny, *Geschichte des Römischen Rechts im Mittelalter*. — *Achermann, loc.*)

stitutiones Historia Medicinæ; Bulæus, *Historia Universitatis Parisiensis*; Pasquier, *Recherches de la France*; *Edinburgh Review*, June, 1831, art. 'English Universities—Oxford'; Meiners, *Geschichte der Entstehung und Entwicklung der hohen Schulen unsers Erdtheiles*; *Quarterly Journal of Education*; Balbi, *Abbrégé de Géographie*; *American Almanac* for 1846.)

UNIVERSITY. This word is the English form of the Latin *universitas*, which is often used by the best Latin writers. The adjective 'universi' signifies the whole of anything, as contrasted with its parts: the plural 'universi' also is often used to express an entire number of persons or things, as opposed to individual persons or things. The uses of the word *universitas* may be derived from the meaning of *universus*. *Universitas* is used by the Latin writers to express the whole of anything, as contrasted with its parts: thus Cicero speaks of all mankind as '*universitas generis humani*;' and he proceeds to instance individuals (*singuli*) as the ultimate elements of this *universitas*. It is not necessary to the notion of a *universitas* that all the elements should be alike; '*universitas rerum*' is Cicero's expression for the whole of things—for all things viewed as making one whole. The word *universitas* applies either to a number of things, or of persons, or of rights, viewed as a whole. The Roman jurists expressed by the term '*universitas bonorum*' the whole of a property as contrasted with the parts (*singulæ res*) which composed it. Such a *universitas* might be the object of a universal succession. [SUCCESSION.]

Rights and duties are properly attached to individuals as their subjects: but a number of individuals may be viewed for certain legal purposes as one person or as a unity. Thus the notion of a number of persons forming a juristical person, or a *universitas*, obtained among the Romans, and *universitas* was a general name for various associations of individuals, who were also indicated by the names of *collegia* and *corpora*. The essential character of these *universitates* of persons, viewed as juristical persons, was the capacity of having and acquiring pro-

perty. The property, when acquired, might be applied to which the nature of the association required: but it was the capacity of association to have and acquire property, which was the essential characteristic of the body as a *universitas*; the purposes for which the property might be had or acquired were not more a part of the notion of a *universitas*, as, than the purposes for which an individual has acquired property are part of his capacity to have or to acquire.

The universities or corporations in Rome were very numerous. There were corporations of bakers, publicans, farmers of the revenue, of scribes, and others. The name was also applied in the sense above explained to *civitates*, *municipia*, and *respublicæ*; and also to the component parts of them, as *cursus*, *vici*, *fora*, *conciabula*, and *castella*.

From the Roman words *universitas*, *collegium*, *corpus*, are derived the terms university, college, and corporation of modern languages; and though these words have obtained modified significations in modern times, so as not to be differently applicable to the same things, they all agree in retaining the fundamental signification of the terms, which ever may have been superadded to them. There is now no university, college, or corporation which is not a juristical person in the sense above explained. Whenever these words are applied to any association of persons not stamped with this mark, it is an abuse of terms.

The word university, in its modern acceptance, has often been misunderstood. Its proper meaning is explained in this article; and the application of the term to associations of teachers or pupils is explained in the article *UNIVERSITY*. (Savigny, *Geschichte des Hess. Rechts*, ii. 261, &c.: and i. 378, note a.)

UNLAWFUL ASSEMBLY. [RIOT; SEDITION.]

USAGES. [CUSTOMS; PRESCRIPTIONS.]

USANCE. [EXCHANGE, BILL OF.]

USE. A use, at common law, was a beneficial interest in land, distinct from the legal property therein. The origin of uses is derived by Gilbert (*Law of Uses*, 3) from a title under the civil law,

of an usufructuary interest, the ownership of the thing was introduced by the use; the masters of the civil law, when they were prohibited anything in mortmain, after some by purchasing lands of monks, suffering recoveries, lands round the church and in churchyards by bull from last invented this way of conveyance to others to their own use; the proper matter of equity, a very favourable construction the Judge of the Chancery in those days commonly gave. Thus this way of settling but it more generally precluded all ranks and conditions of men of the civil connections of houses of York and Lancaster the possessions, and to preserve their issue, notwithstanding and hence began the limitations with power of revocation."

[.] But whatever may have been the origin of uses, it is certain that the effecting secret transfers of land without resorting to the public registry of the common law, the desire to dispose of property which the common law did not allow to an early adoption of the

man who was entitled to the use was *cestui que use*. He had no maintaining his title to the use by writ of subpoena, whereby he had the legal estate in the office to uses, was bound to hancery, and was compelled to use with as to the confidence man.

was descendible, according to the common law respecting inheritance; the courts of equity in this case followed the *equitas sequitur legem*. It made by deed, and devisable estate of wills, the courts of equity favoured this method of strictness of the common law, and no transfer of land without seisin. But the *cestui que use* legal ownership. The feeble

was still complete owner of the land at law. He performed the feudal duties, his wife had dower, and his estate was subject to wardship, relief, &c. He might sell the lands, and forfeit them for treason or felony.

The system of uses having been found to produce many inconveniences, notwithstanding various statutes which had been passed from time to time to modify them, it was thought a remedy would be found by joining the possession to the use, or, as it is usually termed, transferring uses into possession. With this view the statute of 27 Hen. VIII. c. 10, commonly called the Statute of Uses, was passed, which enacted, that where any person or persons stood or were seized, or at any time thereafter should happen to be seized of any honours or other hereditaments to the use, confidence, or trust of any other person or persons, or of any body politic, by any manner of means whatsoever, it should be, that in every such case all such person and persons, and bodies politic, that had, or thereafter should have, any such use, confidence, or trust, in fee simple, fee tail for term of life, or for years or otherwise, or any use, confidence, or trust, in remainder or reverter, should, from thenceforth, stand and be seized, deemed, and adjudged in lawful seisin, estate, and possession of, and in the same honours and hereditaments with their appurtenances, to all intents, constructions, and purposes in the law, and in all such like estates as they had or should have in use, trust, or confidence of or in the same; and that the estate, title, right, and possession that was in such person or persons that were or thereafter should be seized of any lands, tenements, or hereditaments, to the use, confidence, or trust of any such person or persons, or of any body politic, should be from thenceforth clearly deemed and adjudged to be in him or them that had or should have such use, confidence, or trust, after such quality, manner, form, and condition as they had before in or to the use, confidence, or trust that was in them.

The statute then provides for the case of several persons being jointly seized to the use of any of them, and transmits

two savings: 1st, To all persons (other than persons who were seised or thereafter should be seised of any lands, tenements, or hereditaments, to any use, confidence or trust) all such right, title, entry, interest, possession, writs, and action as they had or might have had before the making of the Act; and 2nd, To all persons seised to any use, all such former rights as they had to their own proper use in, or to any manors or hereditaments whereof they should be seised to any other use.

Probably the legislature intended by this act to put an end to the system of uses; nevertheless, it was soon settled by the courts that it had not that effect, but that uses might still as formerly be raised, upon which the statute would instantly operate. However, some modifications of the system were introduced. Before the statute, a mere agreement for sale, without words of inheritance, was sufficient to pass the equitable fee to the vendee; but, by the 27 Hen. VIII. c. 16, it was enacted that no contract should transfer the legal estate in the fee, unless it were made by deed enrolled. And it was resolved by the judges that words of inheritance were necessary to pass the fee at law. Indeed, no contract importing a future conveyance, even though made by deed enrolled, and containing words of inheritance, would now be held to transfer the legal estate under the Statute of Uses, though it would entitle the vendee in equity to call for a regular conveyance. A further modification of the system of uses was introduced by the seventh section of the Statute of Frauds (29 Car. II. c. 3), which required that all declarations of trusts or confidences of lands, tenements, or hereditaments (which might formerly have been created by parol), should be manifested and proved by writing, signed by the party by whom it is declared. [STATUTE OF FRAUDS.]

In order to raise a use which the statute will turn into a possession, it is necessary that there should be, 1st, one person seised to the use of another, *in esse*; 2nd, a use *in esse*, limited in possession, reversion, or remainder. The use may be either *express*, as where lands are conveyed to A and his heirs in trust for B and

his heirs, or in confidence that he and they shall take the profits, or where a vendee, for a valuable consideration, conveys by bargain and sale enrolled, in both which cases the legal estate vests in the grantee or bargainee by the statute; or it may be *implied*, as where a feoffment is made without consideration or declaration of the use, in which case the use results, and the estate returns to the grantor. It was settled by the courts of law that the statute could not operate except upon an estate of freehold, and that therefore copyhold and leasehold estates are not affected by it. A term of years may of course be created out of a freehold estate by way of use, but where once subsisting cannot be conveyed by uses. If, therefore, a term were assigned to A to the use of B, the legal estate would remain in A, who however would be considered in equity as a trustee for B.

By the operation of the Statute of Uses, a man may, through the medium of a feoffee or releasee, make a conveyance to his wife, which he could not do at common law (*Litt.*, s. 168; *Co. Litt.*, 112 a.). In like manner a married woman, having a power to limit a use, may appoint to her husband.

At common law a man could not limit a remainder to himself, nor could he limit it to his heirs so as to make them take as purchasers, without departing with the whole fee simple out of his person (*Dyer*, 156 a, fol. 24; *Co. Litt.*, 22 b.), but he may do so by means of a conveyance operating under the Statute of Uses.

On the system of uses and the Statute of Uses has been founded the system of conveying property in land, and making settlements of landed property in land, which is now in use in England; a system composed of numerous artificial rules and deductions, but, on the whole, well adapted to secure the numerous purposes which the owner of land in fee simple wishes to accomplish in disposing of his property.

It is a rule of the common law that joint tenants cannot take at different periods. (1 Co., 100, b. 2.) Again, by the rules a fee could not be limited upon a fee; a freehold could not be made to commence in futuro, and an estate could not

de to cease by matter *ex post facto*, so let in another limitation before expiration of the former. [REMAINS.]

But limitations of the above kinds are made to take effect under the Statute of Uses. Such limitations are called *primary or secondary and springing uses*; or *uses or contingent uses*.

The Statute of Uses was made prior to the Statute of Wills (32 & 34 Edw. III.), it has been questioned whether the Statute of Uses can be held to be a will; but as, before the statute, uses of the use were permitted, so, by the statute, the courts have uniformly held, where a devise is made to a person in fee, the intention of the testator must be taken to be that the devisee of the use should have the legal estate.

In the construction of the Statute of Uses, it was held that a use could not be limited to a person; that is, that the statute would not give effect to the first declaration of use, so that if, by bargain and sale, a use was limited to A and his heirs, and then to the use of B and his heirs.

The statute would vest the legal estate in A without adverting to the use declared in favour of B. The Court of Chancery availed itself of this construction to revive Uses under the name of *trusts*; and it was determined that A, in the case above mentioned, a trustee for B of the beneficial interest in the

subject of this article is briefly defined in Sanders, "On Uses and Trusts;"

see Gilbert, "On Uses," by Sugden, 10th ed., p. 10.

USES, CHARITABLE AND SUPERSTITIOUS. The term 'Charitable'

has a very extensive legal meaning, and includes dispositions of property

which are not in ordinary language described as charitable, but which are so

with reference to the purposes enumerated in the statute 43 Eliz. c. 4, or

which are considered analogous to them. The statute enacted that the Com-
missioners thereby empowered should inquire

into the lands, &c. given by well-disposed people "for relief of aged, impotent, or poor people; for maintenance of sick

and maimed soldiers and mariners; for schools of learning, free-schools, and

scholars in universities; for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; for education and preferment of orphans; for or towards the relief, stock, or maintenance of houses of correction; for marriage of poor maids; for supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; and for relief or redemption of prisoners and captives, and for aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes." The term 'Charitable use' is applicable only to gifts for what are called public charities, the objects of which are not particular individuals, but a class or the public in general.

If lands, tenements, rents, goods, or chattels were given, secured, or appointed for or towards any of the following purposes: for the maintenance of a priest or other man to pray for the soul of any dead man in such a church or elsewhere; to have or maintain perpetual obits, lamps, torches, &c., to be used at certain times to help to save the souls of men out of purgatory,—these or the like purposes are declared to be Superstitious Uses by 1st Edward VI. c. 14. There is no statute making superstitious uses void generally, but it is now an established rule of law that gifts for superstitious uses generally are void, and many gifts have by the courts been declared to be for superstitious uses which are not such in the ordinary acceptance of the term, but are either expressly prohibited by the law or contrary to its policy. A change in the doctrine of superstitious uses has been made by the 2 & 3 Wm. IV. c. 115, which puts persons professing the Roman Catholic religion upon the same footing, with respect to their schools, places for religious worship, education and charitable purposes, as Protestant dissenters; with respect to whom the doctrine of the court is, that it will administer a fund to maintain a society of Protestant dissenters promoting no doctrine contrary to law, though at variance with that of the Established Church. The 2 & 3 Wm. IV. c. 115, is retrospective. (2 M. and K., 225.) Though it is now lawful to give money by will for Roman Catholics

schools or for promoting the Roman Catholic religion, it is not lawful to give money for prayers and masses for the soul of a testator.

The Court of Chancery has a general jurisdiction over property given for charitable purposes, and the regular mode in which matters relating to charities are brought before it, is by information by the attorney-general on behalf of the crown.

The Court of Chancery adopts a very liberal construction of gifts for charitable purposes; and there are numerous cases of gifts for objects not within the letter of the statute of Elizabeth which have been considered to be within the equitable meaning of the word charity as understood in that court, and have been administered accordingly. And when a gift is made for charity generally, without any purpose specified, if the gift be to trustees, the court will order a scheme to be prepared for the direction of the trustees in the administration of the trust; and where the declared object is charity, but no trust has been created, the crown by sign manual disposes of the property, and declares the particular charitable purposes to which it is to be applied.

Where the particular objects which the donor had in view fail, either wholly or in part, the court adopts what is called the principle of *cy-pres*, that is, it directs the property to be applied to worthy objects in its judgment most nearly resembling those which have failed, or when more than one charity has been named by the donor, to such of the others as are still subsisting. When the revenue of the property increases from any cause, the increase goes to the charity, if it appear to have been the intention of the donor that the whole should be disposed of for the benefit of the charity. Several difficult questions have arisen as to the disposition of increased funds.

When property is given to a superstitious use, or for a charitable purpose which cannot legally be executed, the court of chancery will apply it to some other charity. "Whenever a testator is disposed to be charitable in his own way and upon his own principles, we are not content with disappointing his intention,

if disapproved by us: but we make his charitable in our way and on our principles. If once we discover in him any charitable intention, that is supposed to be so liberal as to take in upon us only not within his intention, but wholly adverse to it." (Sir William Grant 1 Ves., 495.) If the superstitious use be one which the court considers charitable, the fund goes to the king to be disposed of to such charitable uses as he shall direct by sign manual: if the use be not charitable, the gift is merely void, and the property will go to the donor's representative. (2 M. and K., 484.)

The regular mode of proceeding in cases of abuse of charitable funds is by way of information in the name of the attorney-general on behalf of the crown. In informations with respect to charities the Court of Chancery always requires a person to be joined with the attorney-general, who is styled the relator, and is answerable for the conduct and costs of the suit. The crown never pays costs, and therefore, in order to protect the defendants, there must be a relator who will have to pay the costs, if the suit should appear to have been improperly instituted.

The above-mentioned Act of the 4th of Eliz. empowered the Court of Chancery to issue commissions to inquire into the abuse or misapplication of property given for charitable purposes; but the proceedings under this act were found unsatisfactory that they gradually fell into disuse, and recourse was again had to the original method of procedure by information.

By the 52 Geo. III. c. 161, commonly called Sir Samuel Romilly's Act, the legislature provided a summary remedy in cases of abuses of charitable trusts, where the aid of the Court of Chancery was required for the administration of them. The act empowered any two or more persons to present a petition to a court of equity praying the requisite relief, which the court might thereupon grant in a summary manner.

By the 59 Geo. III. c. 91, continued by the 2 Wm. IV. c. 67, the attorney-general was empowered to institute a bill by information, without a relator, upon

possession was called *Usurpatio*. If the session commenced bona fide, it was interrupted in the person of the possessor's successor, but it was continued. Romans did not use the term *Præscriptio* simply to express the title by *uscapio* obtained under the legislation *usustianian*; but the expression was *per tempore præscriptio*. There was also an extraordinary *præscriptio*, or *longi temporis præscriptio*, of thirty or forty years. It was allowed in certain cases in the general conditions of *præscriptio* had been complied with, but which certain other reasons were excluded the shorter *præscriptio*. There was also the *præscriptio* of time immemorial.

The *Præscriptio* of the English law is exactly the *Præscriptio* of the Roman law. The Statutes of Limitation more nearly resemble to the *Præscriptio* of the compilations of *Justinian*, but there are differences here. The Roman *Præscriptio* gave a title to things; the Statutes of Limitation the claims of persons who have been out of possession for certain definite periods. The Scotch *Præscriptio* more nearly resembles to the *Præscriptio longi temporis* of the Roman law. [PRÆSCRIPTIO; STATUTES OF LIMITATION.]

The subject of *Usucapio* admits and deserves a much more complete exposition. The reader may refer to the following works:—Engelbach, *Ueber die Usucapio zur Zeit der zwölf Tafeln*, Marburg, 1828; Mühlenbruch, *Doctrina selectarum*; Mackeldey, *Lehrbuch des Röm. Rechts*, where numerous varieties are referred to.

USUFRUCTUS, or USUFRUCTUS. *USUS*, belonged to the class of *Res Personarum* or *Personales* among the Romans. *Usufructus* is defined (*Dig. 7, tit. 1, s. 1*) to be "the right to use and take the fruits (*fructus*) of what belongs to another without impairing its substance." *Usus* is defined (*Dig. 7, tit. 1, s. 2*) to be the right "to use, but not to take the fruits (*fructus*)."

The objects of *usufructus* might be land (*res*), houses (*res*), slaves, beasts of burden, and other things. He who was

entitled to *usufructus* was called *Usufructuarius*, or *Fructuarius*. A right to a *usufructus* might be given to a person by testament, or it might be established by contract.

Generally, it may be stated that all the "fructus," or produce of a thing that accrued during the time of enjoyment, belonged to the *Fructuarius*; but his title to *fructus* was not complete till he had taken them, and it was a general rule that any "fructus" which had not been got in or taken at the time when the *usufructus* ceased, did not belong to him. The law as to things that yield an increase, such as fruit-trees and animals, did not present many difficult questions. As to houses and lands, the questions were sometimes more difficult. The *Fructuarius* was entitled to the rents and profits of houses during his time of enjoyment, and he was bound at least to keep them in sufficient repair, but probably not to rebuild them, if they were in a ruinous condition. He was bound to cultivate land in a proper husbandlike manner. He could work existing mines and quarries for his benefit, and he could also open new mines and work them. Generally his right of enjoyment consisted in using the thing so as not to damage the substance (*salva rerum substantia*; *Ulpian, Dig. 7, tit. 1, s. 1*). The *fructuarius* could maintain his rights to the *usufructus* by actions and interdicts. The period of *usufructus* might either be for a fixed time or for the life of the *fructuarius*. At the termination of the period of enjoyment, the thing was to be given up to the owner, who could generally require security for its being properly used and given up in proper condition.

The *usus* of a thing, as already explained, was a right to the enjoyment of a thing, but not to the produce or profits of it. Yet in some cases the *usus* of a thing implied a right to a certain amount of produce. Thus the *usus* of cattle implied that the *usuarius* was entitled to a moderate allowance of milk; and a man who had the *usus* of an estate could take wood for his daily use, and could enjoy the fruits of the orchard and other things in moderation. If a man had the *usus* of an oxen, he could employ them for all purposes.

ties (censures), and marriage, and in the case of an hereditas. Originally such servitudes as followed the rule of law as to Res Mancipi could only be transferred like Res Mancipi; and therefore Usucapio could only apply to such servitudes. But by analogy to Res Mancipi, they could be acquired by bare contract, to which Usucapio was superadded; and when Mancipatio at a later period was replaced by bare tradition, they could be acquired by contract simply. In the case of marriage, when there was no co-emptio, the woman might come into the power of her husband by virtue of uninterrupted cohabitation of one year; and she was then said to become a part of his Familia by Usucapio founded on a year's possession. (Gaius, i. 111.) In the case of the Hereditas, when the testator had not disposed of his property by the necessary forms of the Mancipatio and Nuncupatio, the person who was named heres in the will could only acquire his legal title as such by Usucapio.

These various instances will show the original notion of Usucapio. It was a legal effect given to bonâ fide possession and uninterrupted enjoyment for a fixed time, by which defects in the transfer of a thing were made good: it was not originally a mode of acquisition. It was

an acquisition.

In the Roman law, as known in the Digest, Usucapio appears as a mode of acquisition which must have been owing to the circumstance of the thing going out of use: for bare tradition in all cases, followed by the praetor, gave complete ownership. Finally the difference between Res Mancipi and Res Nec Mancipi was abolished, Usucapio in its original sense ceased. But at the time of Gaius we find Usucapio applicable to the case of things Nec Mancipi, which a person had possessed for a year; this rule of law still continued, though various limitations were in course of being established as to the mode of acquisition of the ownership of a thing by tradition of it. Thus Justinian, in his Institutes (ii. tit. 6), after reciting the law, refers to one of his Codes (Cod. 7, tit. 31), by which the mode of acquisition of moveables might be acquired (usucapiantur), provided there was bonâ fide possession (justa causa possessionis praecedente) for three years in the case of immoveable things by the temporis possessio, which he reduces to be ten years "inter praesentes" and twenty years "inter absentes." The Constitution applied to the whole of Usucapio is defined in the Digest

session was called *Usurpatio*. If the session commenced *bonâ fide*, it was interrupted in the person of the possessor's successor, but it was continued. The Romans did not use the term *Præscriptio* simply to express the title by usucapio obtained under the legislation of Justinian; but the expression was *usui temporis præscriptio*. There was also an extraordinary *præscriptio*, or by possession, of thirty or forty years, which was allowed in certain cases in which the general conditions of *præscriptio* had been complied with, but which certain other reasons were excluded in the shorter *præscriptio*. There was also the *præscriptio* of time immemorial.

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of *furtum*, a *bonâ fide* purchaser of land from a man who was not the owner, and knew he was not the owner, might acquire the property of it by *Usucapio*, provided the seller had not acquired the possession by violence, but had either taken possession of land which was vacant through the carelessness of the owner, or from the owner dying without a successor, or having been long absent.

Besides individual objects of property, *Usucapio* could exist in the case of servitudes (easements), and marriage, and in the case of an *hereditas*. Originally such servitudes as followed the rule of law as to *Res Mancipi* could only be transferred like *Res Mancipi*; and therefore *Usucapio* could only apply to such servitudes. But by analogy to *Res Mancipi*, they could be acquired by bare contract, to which *Usucapio* was superadded; and when *Mancipatio* at a later period was replaced by bare tradition, they could be acquired by contract simply. In the case of marriage, when there was no *co-emptio*, the woman might come into the power of her husband by virtue of uninterrupted cohabitation of one year; and she was then said to become a part of his *Familia* by *Usucapio* founded on a year's possession. (Gaius, i. 111.) In the case of the *hereditas*, when the testator had not disposed of his property by the necessary forms of the *Mancipatio* and *Nuncupatio*, the person who was named therein in the will could only acquire his legal title as such by *Usucapio*.

These various instances will show the original notion of *Usucapio*. It was a legal effect given to *bonâ fide* possession and uninterrupted enjoyment for a fixed time, by which defects in the transfer of a thing were made good; it was not originally a mode of acquisition. It was founded on a title good in substance but defective in form; and this defect was supplied by the proper period of enjoyment (*usus*). When this *usus* had continued for the legal time it gave its *auctoritas* (as the Romans expressed it), its efficiency and completeness to what was in its origin incomplete, and the phrase *Usus Auctoritas* was older than the expression *Usucapio*, which was afterwards the ordinary term. But *Usus* by itself

never signified *Usucapio*: for *Usus* alone could not give a title to the ownership of a thing. In the case of public land the possessor had the *usus*, but this was all that he could be entitled to as possessor. Such *usus* could not from the nature of the case have an *auctoritas*, for the possessor did not occupy the public land as a *bonâ fide* purchaser. A man might also have the *usus* of private land without having a title to anything further; in which case also the *usus* could never have an *auctoritas*.

In the Roman law, as known to us in the Digest, *Usucapio* appears as a mode of acquisition which must have been owing to the circumstance of *Mancipio* going out of use: for bare tradition in all cases, followed by the proper *usus*, gave complete ownership. Finally, when the difference between *Res Mancipi* and *Nec Mancipi* was abolished, *Usucapio* in its original sense ceased. But as in the time of Gaius we find *Usucapio* applicable to the case of things *Nec Mancipi*, which a person had possessed *bonâ fide*, this rule of law still continued, and various limitations were in course of being established as to the mode of acquiring the ownership of a thing by the enjoyment of it. Thus Justinian, in his *Institutes* (ii. tit. 6), after reciting the old law, refers to one of his Constitutions (Cod. 7, tit. 31), by which the ownership of moveables might be acquired by *us* (*usucapientur*), provided there was a *bonâ fide* possession (*iusta causa possessionis præcedente*) for three years, and that of immovable things by the "*longi temporis possessio*," which he explains to be ten years "*inter præsentem*," and twenty years "*inter absentes*," and the Constitution applied to the whole empire. *Usucapio* is defined in the Digest (ii. tit. 8, s. 3) to be the "*additio de ownership by the uninterrupted possession for a time fixed by law*." As it was the addition of ownership, something is here implied to which this addition was to be made; and this something was a *bonâ fide* possession, that is, a possession obtained in a legal way, so that the possessor believed himself to be owner. To render possession effectual, it must be uninterrupted legal possession. An interrupted

possession was called *Usurpatio*. If the session commenced *bonâ fide*, it was interrupted in the person of the possessor's successor, but it was continued. The Romans did not use the term *Praeceptio* simply to express the title by *usucapio* obtained under the legislation of Justinian; but the expression was *longi temporis praescriptio*. There was also an extraordinary *praescriptio*, or by possession, of thirty or forty years, which was allowed in certain cases in which the general conditions of *praescriptio* had been complied with, but which certain other reasons were excluded in the shorter *praescriptio*. There was also the *praescriptio* of time immemorial.

The Prescription of the English law is not exactly the Prescription of the Roman law. The Statutes of Limitation have a nearer resemblance to the Prescription of the compilations of Justinian, but there are differences here: the Roman Prescription gave a title to things; the Statutes of Limitation the claims of persons who have been out of possession for certain fixed periods. The Scotch Prescription has a nearer resemblance to the *Praeceptio longi temporis* of the Roman law. — [PRESCRIPTION; STATUTES OF LIMITATION.]

The subject of *Usucapio* admits and requires a much more complete exposition. The reader may refer to the following works:—Engelbach, *Ueber die Usucapion zur Zeit der zwölf Tafeln*, Marburg, 1828; Mühlenbruch, *Doctrina iudicialium*; Mackeldey, *Lehrbuch des heutigen Röm. Rechts*, where numerous authorities are referred to.

USUFRUCTUS, or USUSFRUCTUS. *USUS*, belonged to the class of *Res in Personarum* or *Personales* among the Romans. *Ususfructus* is defined (Dig. 7, tit. 1, s. 1) to be "the right to use and take the fruits (*fructus*) of what belongs to another without impairing its substance." *Usus* is defined (Dig. 7, s. 1, 2) to be the right "to use, but not to take the fruits (*fructus*)."

The objects of *ususfructus* might be land (*fundus*), houses (*aedes*), slaves, beasts of burden, and other things. He who was

entitled to *Ususfructus* was called *Usufructuarius*, or *Fructuarius*. A right to a *Ususfructus* might be given to a person by testament, or it might be established by contract.

Generally, it may be stated that all the "fructus," or produce of a thing that accrued during the time of enjoyment, belonged to the *Fructuarius*; but his title to *fructus* was not complete till he had taken them, and it was a general rule that any "fructus" which had not been got in or taken at the time when the *Ususfructus* ceased, did not belong to him. The law as to things that yield an increase, such as fruit-trees and animals, did not present many difficult questions. As to houses and lands, the questions were sometimes more difficult. The *Fructuarius* was entitled to the rents and profits of houses during his time of enjoyment, and he was bound at least to keep them in sufficient repair, but probably not to rebuild them, if they were in a ruinous condition. He was bound to cultivate land in a proper husbandlike manner. He could work existing mines and quarries for his benefit, and he could also open new mines and work them. Generally his right of enjoyment consisted in using the thing so as not to damage the substance (*salva rerum substantia*; Ulpian, *Dig.* 7, tit. 1, s. 1). The *fructuarius* could maintain his rights to the *ususfructus* by actions and interdicts. The period of *ususfructus* might either be for a fixed time or for the life of the *fructuarius*. At the termination of the period of enjoyment, the thing was to be given up to the owner, who could generally require security for its being properly used and given up in proper condition.

The *usus* of a thing, as already explained, was a right to the enjoyment of a thing, but not to the produce or profits of it. Yet in some cases the *usus* of a thing implied a right to a certain amount of produce. Thus the *usus* of cattle implied that the *usuarius* was entitled to a moderate allowance of milk; and a man who had the *usus* of an estate could take wood for his daily use, and could enjoy the fruits of the orchard and other things in moderation. If a man had the *usus* of an oxen, he could employ them for all pur-

poses for which oxen are properly used. The duties of the usufructus resembled those of the fructuarius.

The rules of law which related to the *Usufructus* and *Usus* were numerous. Many of them are collected in the *Digest*, lib. 7; see also '*Fragmenta Vaticana*,' *De Usufructu*; and *Mühlenbruch, Doctrina Pandectarum*.

The Roman *Servitutes Personarum* were mere personal rights, which a man had as being a particular person. The rights which a man might have upon the land of another in respect of land of his own, were the *Servitutes Prædiorum* or *rerum*: the land itself may here be viewed as the subject to which the rights were attached, and the person who possessed the land had with it the rights which were attached to the land. The Easements of the English law comprehend rights of way, and the like, which a man has on or over the property of another in respect of being the owner or occupier of land to which such rights are attached, or by virtue of a grant.

USURPATION. [*USURCAPIO*.]

USURY. This word comes from the Latin *Usura*, or as it is more frequently used, *Usure* in the plural number. The Latin word signifies money paid for the use of money lent. The old word in use in England to signify what we now call interest, seems to have been *Usury*. But usury now means taking more interest for the loan of money than the law allows. A good deal on the subject of usury is contained in the arguments and judgments in the case of the Earl of Chesterfield and others *v.* Sir Abraham Jansson (2 *Vez.*, 125).

Interest is money which is paid for the use of other money, called principal. The general practice is this: the borrower agrees to pay a fixed sum yearly, half-yearly, or quarterly, for each 100*l.* lent, until the money lent is returned. When this is not the case, and when the money paid for the loan depends upon the success of an undertaking, or any casualty not connected with the duration of life, it is called a *dividend*: when the money and its interest are to be returned by yearly instalments, and paid off in a certain fixed number of years, it is called an

annuity certain; but when the payment is to depend upon the life of any person or persons, it is called a *life-annuity*. [*ANNUITY*.] But by whatever name the proceeds of money may be called, the rules of calculation are the same in every case except that of a life-contingency.

The amount of money which persons are willing to pay for the temporary use of money depends upon a variety of circumstances. When profits are high, the rate of interest will also be high. When, on the contrary, money capital is abundant in proportion to the calls for it, the competition of those persons who possess money, and who derive an income from it, will lower the rate of interest in the money-market. They will lend money at a low rate of interest to traders, who again will meet each other in competition in their various occupations, and must be content with such a rate of profit as will repay the low rate of interest for which they have bargained, together with such a compensation for their risk, skill, and trouble in its management as the degree of competition at the time will allow. If some new channel for the employment of money should be opened which holds out the promise of higher profits, a competition among borrowers will ensue, the effect of which will be to raise the rate of interest until it assumes its due proportion to the rate of profits; and as there never can, generally speaking, be two rates of profits at the same time (at least for any long period), in the same market, the effect of the additional call for capital to supply the partial demand that has been supposed, will be to raise profits and interest generally. An increase of money capital, either absolutely or relatively to the means for its employment, will obviously have the contrary effect of lowering its value in use, that is, reducing the rate of interest and profits.

It would be difficult to imagine any circumstances relating to the loan of money, which must not resolve themselves into the conditions here proposed; and it is therefore difficult to see wherein consists the wisdom of governments in limiting the rate of interest; and yet the fact of such limitation has usually been the rule, and the character of a ventilation of it

rate of interest the exception. The instance of the laws which regulate the rate of interest in this country having been made by those who are among the class of borrowers rather than of lenders, may perhaps afford an explanation of the views of the future in putting restrictions on the rate in money. That these restrictions ever were, and so far as they exist are, unfavourable both to lenders and borrowers, and more unfavourable to the lenders than the borrowers, may easily be demonstrated. In the year 1787 Mr. Bentham wrote his 'Defence of Usury,' showed, in a manner which one would have thought adapted to produce real conviction, the mischief of such restrictions so far as the law was operative, and the inefficiency of the law to cut altogether what are denominated loans transactions. But the minds of our law are slow in surrendering a prejudicial false judgment to the attacks of true principles; and for many years the efforts of Mr. Bentham and others remained fruitless. The system of restriction has ever of late been modified in some important particulars, so that within certain limits, as regards time, the rate of interest among the mercantile classes may be said to depend upon what may be considered the market value of money, and is thus allowed to bear its due proportion to the current and usual rate of the same. A statute passed in 1545 limited the rate of interest to 10 per cent. per annum; in 1624 the rate was lowered to 8 per cent., in 1650 to 6 per cent., and by statute 12 Anne, st. 2, c. 16 (1713), it was further reduced to 5 per cent., beyond which rate, with the recent exception here referred to, it has been illegal to give since that time, under the penalty of forfeiting for every offence three times amount of the money lent.

During the late war, when the rate of interest was high and when the government borrowed enormous sums, the system of restriction was not adhered to in the relation of its loans, the interest upon which was necessarily regulated by the market value of money; and at all times cautious borrowers and those who have

lenders have always found means to evade the statute by granting annuities [Annuities] and by other means. Except for one or two almost momentary occasions of commercial difficulty or panic, the market rate of interest in this country has not been higher, since the peace in 1815, than the legal rate.

The law does not recognise the charge of interest upon interest, or, as it is called, compound interest; and yet it is only equitable that where money which is due for interest is not settled, it should be considered a fresh loan, for the use of which interest should be paid. This however is a rule so easily evaded by the borrower granting a further acknowledgment of the interest as though it were principal, that it does not amount to a practical hardship; such new contract, in fact, changes the interest already due into a principal sum. The law also recognises rates in mercantile and banking accounts, in which interest is charged upon a former ascertained balance. Such balance may, and in fact often does, include interest already due; and thus the creditor really receives interest upon interest, or compound interest.

Debts do not always carry even simple interest from the time when the money becomes due to the creditor; in such case payment of interest is rather the exception than the rule. Unless the debt be such a debt as carries interest by the custom of merchants or traders, or unless there is an express agreement to such effect between the parties, or unless such agreement can be inferred from their course of dealing, or unless there are some very special circumstances, debts do not carry interest from the time when due. But now, by 3 & 4 Will. IV. c. 42, a jury may, if they think fit, upon all debts or sums certain, allow interest to the creditor, at a rate not exceeding the current rate of interest, from the time when such debts or sums were payable, if payable by virtue of a written instrument at a certain time; or if payable otherwise, then from the time of a demand of payment in writing, so as such demand give notice that interest will be claimed from the date of such demand. This statute also empowers juries to give damages, in

the nature of interest, in respect of the detention or appropriation of goods. By 1 & 2 Vict. c. 110, all judgment-debts are to carry interest at the rate of 4 per cent. per ann. from the time of entering up the judgment. As to interest of money lent on ships or their cargo, see *BOTTOMRY*, and on legacies, see *LEGACY*.

The relaxation above mentioned as having been made as to the rate of interest formed part of the arrangement made in 1833, at the renewal of the charter of the Bank of England. (3 & 4 Wm. IV. c. 98.) It consisted in excepting from the operation of the statute all bills of exchange and promissory notes not having more than three months to run previous to their maturity; these might be discounted at any rate of interest agreed upon with the holder. More recently, by the act 1 Victoria, c. 80 (July, 1837), this relaxation was extended to all such mercantile instruments which have not twelve months to run before they are due.

USUS. [*USURUCTION*.]

V.

VAGRANT This term, which simply denotes "a wandering person," is derived from the Latin *vagor*. It was probably introduced into our law language from the Norman French; for the phrase "*vagerantz de lieu en lieu currans per pais*," occurs in our early statutes in the sense in which the word "vagrant" is used in common language at the present day. (Stat. Rich. II. c. 5.) The persons to whom it is applied in ancient documents are usually classed with "*faitours*" (a word of doubtful origin, but meaning an idle liver or slothful person: Cowell's *Interpreter*; Kelham's *Dictionary*), "*travelyng-men*," and "*vagabonds*." The latter expression, "*vagabundus*," was known throughout Europe in connection with feudal law, and is interpreted to mean "crebro vagans, cui nec certum domicilium, nec constans habitatio est." (Calvini *Lexic. Jurid.*) It was used in this sense in English law as early as the reign of Henry II. (Cowell's *Interpreter*.) Modern laws have however given to the word "*vagrant*" a much more extended

meaning, in the application of which the notion of wandering is entirely lost.

In the course of the transition made by the lower classes of society from the condition of feudal vassals to that of free labourers, vagrancy and mendicancy arose from the unsettled state of the poor; and in most countries where feuds had prevailed, severe laws were made to repress the evils which sprung from this source. In England various statutes and ordinances were passed to obviate the inconveniences arising from wandering mendicancy. These statutes were very numerous from the 23 Edward III. (1349) to the end of the reign of Henry VIII. The notwithstanding these laws vagrancy appears to have greatly increased at the beginning of the reign of Edward VI. and a severe enactment (1 and 2 Edward VI. c. 3) against vagrancy was passed in that reign, but it was repealed by 2 & 3 Edward VI. c. 16.

About the beginning of the reign of Elizabeth, a description of persons called *rogues* first appear in the general class of vagrants. The derivation of this word is variously given. Horne Tooke derives it from a Saxon word signifying "clanked," or covered. (*Diversions of Purley*, vol. ii., p. 227.) Webster takes it from another Saxon word, and Dr. Johnson admits its derivation to be uncertain. Lambard says, "The word is but a little guest in our law; for the ancient statutes call such a one a valiant, strong or sturdy beggar or vagabond, and it seemeth to be fetched from the Latin '*rogator*,' an asker or beggar." (*Eirenarchia*, book iv. chap. 4.) Dalton also says, "A *rogus* may be so called quia ostium *rogus*." (*Country Justice*, chap. 83.) It is believed that the word does not occur in the English language before the middle of the sixteenth century; and if so, it is probably one of those numerous cant words by which, at that period, vagrancy is counterfeited Egyptians or gipsies, began to designate different classes of their own "ungracious rabble," and of which Harrison enumerates twenty-three degrees. (Harrison's *Description of England*, prefixed to Hollinshed's *Chronicles*.)

In the course of the reign of Elizabeth the evils of vagrancy increased to 22

king extent; and although the accounts given by historians of the multitudes of vagabonds in England are founded on rude estimates, and are probably somewhat exaggerated, there is undoubtedly some truth in the numbers and attitude of these persons at that period constituted them of dangerous magnitude.

In 1597, after experience had shown that temporary expedients and ill-directed severity only increased the amount of vagrancy, and that severe punishments and fines were wholly ineffectual in preventing it, the House of Commons appointed a committee to whom most of the existing laws relating to the condition of the poor, as well as certain bills then under amendment, were referred. (See *House of Commons Journals*, p. 561.) This committee, of which Sir Francis Bacon was a member, and which was composed of all practical men of the House, seems to have perceived and to a certain extent acted upon the principle that, in order to prevent the increase of vagrancy and its attendant evils, it was necessary to provide means of relieving that destitution which was the ready and plausible excuse for idleness. They therefore prepared the Statute 39 Eliz. c. 3, which for the first time organized that machinery for the relief of the poor, which was a few years afterwards completed and made permanent by the Statute 43 Eliz. c. 2. The committee also recommended measures for encouraging the building of almshouses, or abiding and working houses, for the poor, and for improving the system of reforming such as were already in existence, but had been misapplied or neglected. And at the same time they introduced a more rational enactment for the prevention and suppression of fraudulent vagrancy. (Stat. 39 Eliz. c. 4.) "These statutes," says Sir Edward Coke, (4th Inst. 728), "have been made for the punishment of rogues, vagabonds, and sturdy beggars, but very few to find them out, and to enforce them thereunto." The Statute 39 Eliz. c. 4, supplied this defect by providing houses of correction, with stocks and materials for the employment of the inmates, and by engaging the use of the means thus placed in the hands of the poor by severe penal-

ties against the idle. The provisions of this statute, with some alterations made by the Statute 1 Jac. I. c. 25, continued in force during the 17th century; and, when repealed by the Statute 12 Anne, Stat. 2, c. 25, still served as the model and foundation for future acts. It declared that a great variety of persons, who are described in the act, should be deemed rogues, vagabonds, and sturdy beggars.

The continued unwillingness of magistrates to enforce the Statute of Elizabeth, notwithstanding a proclamation of James I., occasioned the passing of the Statute 7 Jac. I. c. 5, which compelled the justices of every county under heavy penalties to erect proper houses of correction for setting rogues, vagabonds, and other idle and wandering persons to work, and also required them to meet twice a year or oftener, if occasion required, for the better execution of the law.

The laws relating to vagrants continued substantially upon the footing of the Statutes of 39 Eliz. and 7 Jac. I. for more than a century, until, in 1744, they were reconsidered and remodelled by the Statute 17 Geo. II. c. 5. This was the first legislative measure which distributed vagrants into the three classes of idle and disorderly persons, rogues and vagabonds, and incorrigible rogues. Although this Statute is now wholly repealed, it continued in force nearly a century, until 1822, when a temporary act, Statute 3 Geo. IV. c. 40, passed, repealing all former laws and re-enacting most of the provisions of the Statute 17 Geo. II. c. 5, with many additions and modifications. The provisions of the Statute 3 Geo. IV. c. 40, were however entirely superseded by the Statute 5 Geo. IV. c. 83, which now (1846) constitutes the law respecting vagrants. This act was amended by the 1 Vict. c. 38 (1838). The third section of the Statute 5 Geo. IV. declares what persons are idle and disorderly persons, and may be committed by a single magistrate to hard labour in the house of correction for any time not exceeding one month.

The 4th section of this act declares certain classes of persons, which are there described, to be rogues and vagabonds, and empowers a single magistrate to commit them to hard labour in the house

it to be expedient. Incurrible rogues are defined by the statute.

The statute, besides the definition of the facts and circumstances which are to constitute offences in the several classes above enumerated, contains various provisions for the prosecution of vagrants and the regulation and disposal of them. Thus it is enacted that any person may apprehend a vagrant and bring him before a magistrate. The persons as well as the carriages or luggage of the several descriptions of vagrants may be searched, and money or goods found upon them may on their conviction be applied towards the costs of apprehending them and maintaining them in prison. If proceedings at the sessions are contemplated, either by reason of an appeal against a summary conviction or the commitment of an incurrible rogue, the committing magistrate may bind over witnesses to prosecute, and the justices at sessions may order the payment of costs to persons so bound. And an appeal is given to the next sessions to any person aggrieved by an act or determination of any magistrate out of sessions concerning the execution of the act.

Although the modern statute is in many respects an improvement of the law, it is liable to some of the objections which

inaccurate. For instance, who are considered "suspected persons," "putted thieves," or what is to be an "unlawful purpose," or "from a street," in the true legal construction of this statute, so as to render the to whose acts these phrases are rogues and vagabonds? are questions of doubt and difficulty to lawyers, and may reasonably give rise to hesitation and differences of opinion among those to whom the final interpretation of penal laws belongs. The tude and vagueness of expressions is peculiarly dangerous in a law which gives large judicial power to professional persons, who are for the most part withdrawn from the control of public opinion in the exercise of it; who are the subjects and objects of the law, and connected with local prejudices and prepossessions; and where the parties who suffer from misdecision are the poor and helpless, to whom the law is wholly inaccessible.

VALUE. [POLITICAL ECONOMY.]

VASSAL. [FEUDAL SYSTEM.]

VENDOR AND PURCHASER. The law of Vendors and Purchasers of real estate in England is a subject of great extent, which may be said

of uncertain interest of, in, or out of mortgages, tenements, lands, tenements, endowments, made and created by and sales only, or by parcel only, set out in writing by the parties or by or creating the same, or their or their agents lawfully authorized by law, shall have the effect of lease or as at will, any consideration for any such parcel lease or estate notwithstanding." But leases not exceeding years, whereupon the rent reserved is amount to two-thirds of the full rental value, were excepted. The act was the assignment, grant, and sale of real estate to be in writing and that "an action shall be brought whereby to charge any person any agreement made upon any estate sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person authorized by him lawfully authorized." Note or memorandum of agreement made by the parties need not be a formal deed, and any writing, such as a bill, or receipt for purchase-money, may serve as an agreement within the meaning of the statute if it contains the terms of the lease within itself, or by reference to other writing; and if the document signed by the party, the concurrence of some signature in the document is not required.

The sale of estates by public auction, highest bidder, upon being declared purchaser, is considered to have entered into a contract for purchase according to the particulars and subject to the terms of sale; and the auctioneer, in this purpose considered as the agent of both vendor and purchaser, is authorized to sign an agreement of purchase. The writing down purchaser's name upon any memorandum of sale at the time of the bidding is a final signing. Sales by auction of land are within the above-mentioned limits of the Statute of Frauds, but sales of a greater value under a decree of a court of equity will be carried into execution

although the purchaser did not subscribe any agreement, for the judgment of the court in enforcing the purchase takes it out of the statute. An auction duty of 7d. in the pound is payable upon all sales by auction of any interest in freehold, copyhold, or leasehold lands, tenements, houses, or hereditaments (27 Geo. III. c. 36; 37 Geo. III. c. 14; and 45 Geo. III. c. 35). The subject of the sale and purchase of estates is discussed at length in *Supple's Treatise on the Law of Vendors and Purchasers of Estates*.

VENTRE PACIAS, or *Ventre*, the name of a writ addressed to the sheriff or other returning officer, commanding him "to cause to come" (*venire facias*) the parties set forth at the place named in the writ. The purpose to which the writ has been generally applied, and in reference to which it is generally known, is in summoning juries to serve for the ordinary trial of civil causes.

The form on such occasions now charges the sheriff to "cause to come here forthwith twelve good and lawful men of the body of your county, qualified according to law, and who are knowing of him either to A B, the plaintiff, or C D, the defendant, to make a certain jury of the country between the parties aforesaid of a plea of ———, because as well the said defendant as the said plaintiff, between whom the matter in variance is, have put themselves upon that jury."

This writ is sent out, but is not acted upon, for the court assumes that the parties have been summoned upon it and have failed to appear at Westminster, where anciently the trial itself took place. At the same time another writ issues, by which the sheriff is commanded to detain their lands or goods, or have their bodies, in order to compel their appearance either before the court at a subsequent day, or before the judges of assize or Nisi prius, if they should previously come into the county. This is so arranged that the judges always do previously come into the county, and the jury are summoned and caused to appear before them.

(*Tidd's Practice*; *Supple on Pleading*; 4 Geo. IV. c. 36; 3 & 4 Wm. IV. c. 47.) (*Justi*; *Ventre*.)

VENTRE INSPICIENDO, WRIT

DE. "When a widow is suspected to feign herself with child in order to produce a supposititious heir to the estate, the heir presumptive may have a writ de ventre inspiciendo, to examine whether she be with child or not; and, if she be, to keep her under proper restraint till delivered; which is entirely conformable to the practice of the civil law: but if the widow be, upon due examination, found not to be pregnant, the presumptive heir shall be admitted to the inheritance, though he hath to lose it again, on the birth of a child within forty weeks from the death of a husband." (Blackstone, *Comm.* i. 456.) The Roman practice is explained in the Title of the Digest (25 tit. 4): *De inspiciendo ventre custodiendoque partu*. The practice originated in the joint reigns of Aurelius and Verus, in a case in which a wife denied her pregnancy and the husband maintained it. The wife had separated from the husband, and probably wished to keep the child that might be born, though by law it would belong to the husband. If a woman alleged that she was left pregnant by her deceased husband, it was her duty to announce the fact to those whom it concerned, and to inform them that they might, if they pleased, send women to inspect her (*quæ ventrem inspiciant*). All the proceedings of inspection and of watching the woman, if she should be reported to be with child, are minutely prescribed in the Prætor's Edict. The penalty in case of the woman not complying with the Edict was, that the Prætor would refuse to the child the *Bonorum Possessio*.

The form of the English writ *De Ventre Inspiciendo* is given *Co. Litt.* 8 b. It is directed to the sheriff, and commands him to empanel a jury of twelve women to search whether she be ensein. If they find that she is with child, another writ issues which commands that she shall be safely kept and duly inspected by the women, who must be present at the delivery.

The use of this writ is an instance in which what is called a proceeding at common law is taken from the Roman system. The writ is not obsolete, as some people suppose; it has issued within the last fifteen years. (*Co. Litt.* 8 b., and

N. 44 in Butler's edition; *Comyns, Digest*, Bastard, C.)

VENUE (*vicinetum, visne*, "neighbourhood"). The county in which the trial of a particular cause takes place is said to be the Venue of that cause. The old practice in this matter is connected with the original functions of the jury, as persons who were acquainted with the facts in issue. [JURY.] In order then that a proper Venire might issue to the sheriff, the place in which the action was brought was stated in the margin of the declaration, and on the statement throughout the pleadings of any issuable fact a statement was also made of the place at which such fact was alleged to have occurred. As to all such facts upon which issue was taken, a venire was sued out applying to each different place. The sheriff returned jurors from that place, and by these jurors the facts were decided, so that several distinct Venires and trials might be necessary to dispose of the issues in one action.

When juries ceased to act on their own knowledge, and began to determine on the evidence of witnesses, the necessity ceased for summoning them from the particular part of the county, and the practice gradually declined, till at last, the form of the Venire still continuing the same, two jurors from the same hundred only were required for the trial of a personal action. By the 16 & 17 Car. II. c. 8, it was enacted that no error should be brought, because there was no right Venue, provided the cause was tried by a jury of the proper county or place where the action was brought. After this statute the practice was established of trying all the issues by the jury of the general Venue in the action. By 4 Ann. c. 16, it was further enacted that "every Venire Facias for the trial of any issue shall be awarded of the body of the proper county where such issue is issuable:" that is, from the county at large without reference to the particular hundred containing the place laid as Venue; and such is still the practice. By a general rule of all the courts, of Hilary Term, 4 Wm. IV., it is ordered, that "in future the name of a county shall in all cases be stated in the margin of a de-

son, and shall be taken to be the one intended by the plaintiff, and no other shall be stated in the body of the declaration, or in any subsequent pleading.

This distinction was long since established between local (that is, actions real or real estate) and transitory (that is, actions of debt, contract, for personal injuries, &c.). In regard to the former, it is held that the actual place in which the subject-matter was situated must be the Venue in the action, and that venue will prevail. The reason is said to be that from the circumstance that, unless an action were brought in the actual county, the sheriff of the county would be unable to give effect to the judgment in the action. In transitory actions, on the contrary, the subject-matter of them is held not to have any fixed place, the plaintiff had liberty to bring his action in any county in which he pleased. As a consequence of which it follows, that as the cause of action has occurred out of the kingdom, it is still open to the plaintiff to bring his action in the county of this country. The plaintiff has this liberty in a transitory action. The courts assert an authority upon this point made to them of changing the venue. This is done upon its being made clear that great inconvenience would result from trying in the original county, where the body of the evidence lies in another, or because from local prejudices a fair trial cannot be had, &c. And the same liberty is exercised even in local actions in spite of the technical difficulty which has been before referred to. (3 *Costume's Com.*, 294, 384; *Stephens' Pleading*, c. ii., s. 4, v. 1.)

In criminal trials the Venue is the county in which the offence charged was first committed; before a grand jury for that county the indictment must be returned, and before a petty jury the trial had. The courts however have the discretion as to the power of changing the Venue as in civil cases; and as to local trials, many exceptions have been introduced by various statutes.

FEDEREK. [FOREST LAWS;
HUNTS AND FORESTS.]
VERDICT. [JURY.]

VESTRY is the name of that part of a parish church where the ecclesiastical vestments are kept; and inasmuch as meetings of parishioners have been usually held in this part of the church for parochial purposes, such meetings, duly convened, have acquired the name of vestries; so that even where a building remote from the church has been erected for parochial meetings, it is usually called the vestry-room. When the meeting is held in the church, or even in a building within the precincts of the churchyard, the ecclesiastical courts claim jurisdiction over the conduct of the parishioners.

By the common law all rated inhabitants of a parish have a right, either periodically or when specially convened, to meet in vestry for the affairs of the parish, and to vote the necessary pecuniary rates. But this common law right has been modified in many ways.

1. By custom, which has vested the government of some parishes in a select and usually a self-elected body of persons, probably the successors of individuals to whom the parishioners at some previous time delegated the management of their parish for a stated period, but who, by the indifference and neglect of their constituents, came to hold permanently the powers intrusted to them. The principal act for the regulation of these vestries is the 58 Geo. III. c. 69. It requires that three days' notice shall be given of the holding a vestry; that if the incumbent of the parish is not present, a chairman shall be elected by the meeting, and that minutes of its proceedings shall be kept and signed by the chairman and such of the parishioners present as think fit; and it gives to each inhabitant, provided he has paid his rates, one vote, if he is rated on a rental under 50*l.*, and, if on a higher rental, one vote for every 25*l.* for which he is rated, so that no one however shall have more than six votes. This act does not extend to parishes within the City of London or borough of Southwark.

2. Section 20 of the act 10 Anne, c. 11, gives to the commissioners appointed by that act (for the purpose of erecting fifty new churches in London and its neighbourhood) power to appoint, under their seals, with the consent of the ordinary, a

convenient number of sufficient inhabitants, in each parish created under the act, to form a select vestry of such parish." It vests in the majority of such select vestry the power to supply vacancies, and gives them all the powers of other vestries. The 59 Geo. III. c. 134, another church-building act passed to explain and amend the act of the previous session, gives a similar power (§ 30) to the commissioners under those two acts to appoint, with the like consent, a select vestry out of the "substantial inhabitants of the district," parish, or chapelry, for the management of the affairs of the church, and the election of church or chapel wardens, vacancies being supplied by the select vestry itself; and the 10th section of the act 3 Geo. IV. c. 72, confines the powers of the vestryman to his own district with respect to ecclesiastical matters, and provides that any deficiency (a somewhat vague expression for an Act of Parliament) in the select vestry shall be supplied as vacancies have heretofore been filled up in the vestries of the particular parish. Local acts have also created vestries.

3. The 59 Geo. III. c. 12 (Sturges Bourne's Act), enables general vestries to appoint special vestries, consisting of not more than twenty, or fewer than five, parishioners to superintend the relief of the poor, the overseers of the poor being placed under their authority. These special vestries are little more than committees of the general vestries, to which they are responsible.

4. A fourth kind of vestry is created by 1 and 2 Wm. IV. c. 60 (Sir John Hobhouse's Act). The adoption of this act is left to the discretion of each particular parish; but rural parishes of less than 800 rated householders are excluded from its operation. In order to apply the act to any parish, either one-fifth, or else fifty, of the rated parishioners must sign a requisition to the churchwardens to take the votes of the parishioners for or against its adoption. When the act has been adopted in the manner provided by the act, the parishioners who have been rated one year to the relief of the poor meet on some day in May (21 days' notice having been previously given on the church-

doors), and elect out of the resident householders assessed upon an annual rental of not less than ten pounds (or if the parish is in the City of London, or contain more than 3000 resident householders upon an annual rental of 40*l.*), persons as vestrymen, in the proportion of twelve for every thousand rated householders; but the number of vestrymen is never to exceed 120. One-third of the vestry goes out of office in rotation annually, and their places are supplied by the method already described. The incumbent of the parish is entitled *ex-officio* to be a member of the vestry; indeed the name of the parish is supposed to be entitled to preside at vestries, but by what authority, other than an implied opinion of the ecclesiastical courts, and the provision already cited from the 58 Geo. III. c. 69, is not clear. This act also prescribes that the parish accounts shall be open to the inspection of all the parishioners; and that on the day of electing vestrymen the rate-payers shall elect, out of persons with the same qualification as is necessary for vestrymen, two auditors of the accounts, who shall not be members of the vestry, or concerned in any contract with the parish. These are to audit the accounts every half-year, and an abstract of the accounts is to be published by the vestry clerk within a week night after the audit, and distributed to the rate-payers at the price of one shilling each copy. A statement is also to be made out annually, for the inspection of the parishioners, of all the estates and charitable foundations of the parish, their names and application.

It is the duty of vestries to provide funds for the maintenance of the office of the church and the due administration of public worship; to elect churchwardens; to present for appointment fit persons as overseers of the poor; to administer such estates and other property as belong to the parish; and in some cases, under local acts, to superintend the paving and lighting of the parish, and to levy rates for those purposes.

The remedy for neglect of duty by a vestry is a mandamus from the Court of Queen's Bench, directed to the officers whose duty it would be to perform the

other act, or in some cases by an act of violence against him, or by a punishment the characteristic of one of the ancient courts.

VICARAGE. [*Reverence*, 3, 302.]

VIC APOSTOLIC. [*Catholicism*, 302.]

VIGILANTES, LICENSED. [*Reverence*, p. 302.]

VILL OF FRANKPLEDGE. [*Reverence*, p. 302.]

VILLAGE. [*Reverence*, p. 302.]

VILLAIN, or VILLAIN, denotes a

class of persons subject to his feudal lord. The word is from the low

Latin *Villanus*, which is from the word *Villa*. In England, during

the Saxon period, a large part of the

people appear to have been in a situation, either as domestic slaves

or as tenants of the land. The power

among the Anglo-Saxons, to

kill a slave, was not a crime, but a

crime, unless the slave lived a day

the wound was sufficient, in which

the offence was unpunished. The

law of the Conquest did not materially

alter the law of slavery in England. The

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matter which is to be determined by a majority of voices or opinions of persons who are empowered to give them. The commonest case of voting in countries where there is an elective branch of the supreme power is that of voting for members of a legislature, as in Great Britain and Ireland.

The vote may be given either orally, in which case it is notorious for what person or persons a man gives his vote; or it may be by ballot, that is, by the voter writing on a tablet or paper the name or names of the person or persons for whom he votes, and putting the tablet or paper into a closed box. When the voting is oral, it is open voting; when it is by ballot, it is secret voting, or at least secret so far as the voter chooses to keep it secret, if the business is properly managed; for secrecy is the object of the voting by ballot.

There has been much discussion on the vote by ballot. The question is resolvable into various parts: first, is it a matter of public utility that a man's vote for a member of the House of Commons (to take this as an instance, and the main instance here in Great Britain) should be open or secret? There is something to say on both sides, though those who have argued in favour of the one or the other of the two modes of voting have perhaps not discussed this part of the question fully. There is a short answer to those who say that the non-voters, or the whole body of voters, or that all people have a right to know how a man votes. The answer is, that they are abusing the term Right. The franchise is not given under any such conditions, and there is no Right of the kind, if we use the word Right in its strict and proper sense. What is meant is probably this, that it is for the general interest that a man's vote for a member of the Commons' House should be open, in order that opinion may operate upon him; for if this is not the reason, it is difficult to see that there is any other reason for open voting. But opinion may be wise or unwise, favourable to a good candidate or against him. Open voting, therefore, if it is to be affected by opinion, may have bad results as well as good

results. On the whole, however, it must be admitted in a country in which there is a representative system, that the opinion of the majority of the voters must be considered to be right, and we must consistently admit that under a system of open voting, the whole influence of opinion, if it has any influence, bears a balance in favour of the majority. It then there must be a majority in any given case of voting, and as that majority represents the right opinion, the opinion of the majority before the voting ought to operate, and it can only operate effectually when the voting is open.

On the other side when a man has a vote, it is implied that he has a voice and a will of his own, and that it is intended that he shall exercise it. But he can only exercise it freely when all restraint is removed. So far as public opinion has any value, so far as arguments have any weight, he may learn what opinion is, he may listen to the arguments, and he may vote as he thinks best. If his vote is to be more the expression of his own opinion than of the opinion of other people, which seems to be implied in the phrase of "giving a vote," he ought to be allowed to give his vote in that way which gives him most freedom to do as he wishes, whichever of the two ways that may be. Against opinion and power and influence and threats may and do operate largely on many persons who have votes, and accordingly they vote in a different way from what they would vote if they were free from all influence. We believe the fact is not denied by those who are in favour of the ballot or those who are against it. But then it may be urged that if voting were secret, improper means of working on the voter would be resorted to. It must be admitted that they might and would; but the question is, would they be so efficient in making him vote contrary to his wish as when the voting is open?

A great many people have no opinion of their own: they follow the opinion of others. If the voting is secret, they will follow that opinion which they are inclined to follow, at least if the secrecy of their vote is effectually guarded. If the voting is open, they are exposed to the

ing led for some other reasons of their own choice to vote not as they vote; and it does not follow that because voting is open, they will be guided by the opinion of the majority, which is here assumed to be the right one.

The opinion of the minority is exercised as efficiently on any one as that of the majority. In individual or a few individuals operate on voters either by themselves or by their agents, and the operation of individuals who belong to the majority will be as efficient as the operation of individuals who belong to the minority in proportion to their numbers, the agents being equal.

It is to be determined, though it is not determined here, that secret voting is a whole more consistent with the principle of a man "having a vote" and "exercising it" and that it is at least as consistent to the community as open voting. Here remains the objection that secret voting is a contrivance by which the effect of a man's vote can be secured. The chief objections then to vote by ballot—that it is not for the general good and that secrecy cannot be secured—which may be added a third, that from the attempt to secure more mischief will ensue than from an open voting.

It is possible to devise means by which the bare giving of the vote may be effected, can hardly be denied. The voter of the vote does not keep his secret, which sometimes he would not do in his own affair. If secrecy is secured him against everybody except that is all that can be attempted. It is urged that there would be many objections for many reasons and in various ways.

The part of persons who were interested in elections, to ascertain a man's vote, and that these attempts would lead to many evils and inconveniences to the voter himself, and subject him to annoyances. Granted that this is so or will be so, it does not follow that a greater amount of true expression of opinion, which is the thing to be aimed at in taking men's votes, will not be gained by secret than by open voting.

Bribery is one means by which voters are induced to give their votes; and the enactment of laws against bribery is founded on the assumption that bribery should be prevented, that voters should give their votes without pay or reward. Under the system of open voting there is much bribery in the election of members for the Commons' House. It cannot be asserted that secret voting would destroy bribery, but perhaps it would render it more difficult. This subject is considered under the article *Bribery*.

The condition of the Roman voters was very peculiar. They were very numerous, and many of them very poor. Bribery existed to a great extent when the voting was secret, and there were severe penalties against the candidate who bribed, and probably against his agents also. The Roman voters did not undervalue the ballot, if we may take Cicero's testimony (*Pro Plancio*, 6): the ballot (*tabella*), he says, is a favourite with the people, for it discloses a man's face, but closes up his mind, so that he can do what he chooses, and promise what he is asked. If this representation is true, a Roman might promise his vote to one man and vote for another, and he would be well pleased that he had the power of doing so.

The kind of immorality here suggested is not a matter for severe censure. He who is permitted by the form of the constitution and by law to ask for a vote and gets a promise, may not get the vote which is promised. The immorality of him who buys a vote, or tries to get it by threats, or unfair means, is the same whether the voter keeps his promise or not. The immorality of the voter who promises his vote to one man which his judgment gives to another, and keeps his promise, appears to be at least as great as that of the man who promises his vote to the man whom he does not like, and gives it to the man to whom he wishes to give it.

Secret voting is much used in England, in clubs, in committees, and on many occasions. Its use is recommended by its convenience. It enables a man to vote as he pleases without giving offence, and without getting into personal quarrels. The practice is maintained to be good on

the whole, though occasionally there is evil in it. A spiteful, ill-tempered fellow may, by a secret vote, sometimes inflict injury or at least great pain on an honest and respectable man. Yet the advantages of the secret voting in all cases where it is used, are supposed to be greater than the disadvantages.

If secret voting is in any case good, or if in many cases it is good, as we believe it is admitted to be by all persons, those who object to its being extended to other modes of voting than those in which it is at present practised are loaded with the burden of showing in each case to which it is proposed to extend it, that there are good reasons against such extension. Those who are in favour of the ballot must reply to such reasons. It is sufficient for them to open the case of any particular extension of the ballot, by declaring that in such case the introduction of the ballot would be beneficial.

This matter sleeps at present, but when more urgent reforms are accomplished, it is probable that the discussion of it may be revived.

VOYAGE. [BOTTOMRY; SHIPS.]

W.

WAGER. [GAMING.]

WAGER-POLICY is a name given to a policy of insurance made by persons having no interest in the event about which they insure. [GAMING, p. 59.]

WAGER OF BATTLE. [APPEAL.]

WAGES are the price paid for labour. The labour of man, being an object of purchase and sale, has, like other commodities, a natural or cost price, and a market price. Its natural price is that which suffices to maintain the labourer and his family, and to perpetuate the race of labourers. The rate of wages cannot be permanently below this natural price, for if in any country labourers could not be thus maintained, they must cease to exist; they must be exterminated by famine, or be removed to some other country. If the price paid were only sufficient to maintain the labourer himself, without any family, he would be unable to marry, or his children would die of want. By these distressing causes the supply of la-

bour would be reduced until the action of employers had raised the price of labour to its natural level. But, at the natural price would thus appear that which only wards off starvation there is, happily for mankind, a principle which tends to raise it to a much higher standard. Every man desires to improve his condition, to enjoy more of the comforts and luxuries of life than have to his lot, and to raise himself in the estimation of others. If he has accomplished this, he acquires habits of living which is painful for him to forgo. He vows to bring up his children with the same views and habits as his own, and feels it a degradation if they fall below the standard which he has himself established. The necessary consequence is a tendency to social improvement, to prudence and forethought in management of a family. If a labourer has been accustomed to abundance of rich food, to decent clothing, and a comfortable home, he would be repelled from marriage by a fear of losing these comforts himself, and of bringing poverty upon his wife and family. He would be induced to defer the responsibilities of marriage until he should be better able to bear them. This is a sound and wise principle as regards an individual, and is conducive to the welfare of himself and his family. It is not less advantageous to society at large, and to the class of labourers in particular. If sufferings and demoralization of the people are avoided, and the population is restrained within reasonable limits, the supply of labour does not exceed the demand. A labourer cannot have too many wants. He should desire good food, decent clothing, a cleanly and comfortable home, and education for his children. If the standard of wants could be universally raised, the natural price of labour would rise in proportion; for if each labourer were determined not to render himself unable to gratify these wants, all would command the wages that would satisfy them. The degree in which this principle operates determines the natural price of wages and the condition of the various classes. Where it has no influence

land and many parts of Asia, are only sufficient to support the commonest food, and to the most squalid clothing and so. In more civilized countries, and prudence of the middle tend lower in the scale of social labourers want more and of the comforts and decencies happy, indeed, is that country the natural price of labour is (1) In investigating the participation in reference to wages is condition of the labouring fr. Malthus did no more than common and recognised maxims prudenece to the social state or. He laid down rules for ance, which every richer man ure to be observed by his child yet he has been ignorantly arly defined by many of that have only acquired and main- sler present station by acting very principles which he nee- uested nor discovered, but the es of which he has only more lly explained.

normal market-rate of wages de- on the ratio which the capital the employment of labour bears umber of labourers. If that ratio the competition of capitalists wages; If small, the competi- bourers amongst each other, for nt, must reduce them. When- accumulation of capital is pro- ore rapidly than the increase of e, wages will be on the increase, addition of the working classes continually improving; until k has been given to the increase , or until the growth of popu- ick is naturally encouraged by es) has altered the relative of capital to labourers, and re- market-rate of wages to the ate. While the general rate of egulated by these causes, there is circumstances which, by in- er decreasing competition for nt, tend to raise or depress the d to persons engaged in parti- ipations. Some of the princi- es are—

1. The agreeableness or disagreeable- ness of the employments.

2. The easiness or cheapness, or the difficulty and expense of learning them.

3. Their constancy or inconstancy.

4. The small or great trust that must be reposed in those who carry them on.

5. The probability or improbability of succeeding in them.

It is not uncommon to hear these circumstances stated as the direct and immediate causes of high or low wages in particular employments; as if in some cases employers voluntarily gave high wages, or the labourer could command them merely on account of the nature of the employment. But the relation of supply to demand will influence wages in particular employments, as it does the price of labour generally, and of other commodities; and the circumstances stated above will obviously tend to increase or diminish the number of competitors for particular employments. More will naturally seek an agreeable trade, easily learned, than one of a disagreeable character and difficult to learn. All descriptions of skilled labour bear a higher price than unskilled labour. The expense of acquiring the knowledge of any art or trade would not be acquired at all, unless the person who had incurred it were better remunerated than others who have nothing to offer except their natural strength and intelligence, which is common to all men; but many cannot incur the expense of learning a trade if they would; others are too indolent, too careless, or too awkward; and thus the class of skilled workmen are not open to the same unlimited competition as other classes of labourers, and are in a condition to command higher wages. Wherever uncommon skill, talent, or other advantages are required, the number of persons actually practising and living by an employment, must be comparatively limited. Most persons are deterred from attempting to learn it by the fear of failure, and many who attempt it do not succeed in gaining their livelihood by it. The few who are really successful can then command an extraordinary reward for the exercise of their peculiar talents or acquirements. The world will enjoy the advantage of them at any

wages of skilled labourers; or, in other words, induces them to regard as necessities a variety of comforts which are beyond the reach of common workmen.

Wages are usually calculated in money, and are called high or low according to the money price actually paid; but the condition of the labourer is obviously affected by the price of commodities as well as by the amount of his wages. If the necessities of life be cheap, low money wages will maintain him in comfort; if they become dearer, higher wages will not improve his condition, but will leave him as he was. Hence it becomes a most important object to inquire whether the price of provisions affects the rate of wages. The disputes which have arisen upon this question would seem to be chiefly caused by attempts to apply a universal law to countries and employments under totally different circumstances. Some contend that as wages are regulated by supply and demand, the price of provisions cannot affect them; while others maintain that the average prices of labour and of food must always, for long periods of years, conform one with the other. It is evident, at the outset, that the former are speaking of the market rate of wages, and the latter of the natural rate; and if this distinction

value. Both labour and commodities are equally capable of increase in production, and the varying causes of encouragement or check produce no constant proportion between the natural price and the market price. In some countries the market rate of wages is very much above the natural rate, in others nearly the same. In some countries the labour is increasing more rapidly than population, and in others so fast. It is clear that a rise in the price of food cannot in itself alter the rate of wages alike in all these cases. Where the wages are high, and the capital rapidly accumulated, any rise in the price of food and other necessities is a clear gain to the labourer. Where the wages have only a very remote, if any, relation to the price of food, a lowering of wages; but where the wages are already reduced to the natural rate, and capital is not increasing faster than population, wages will undoubtedly fall with any permanent increase in the cost of subsistence.

The question is further affected by the differences which exist in the rate of wages in various countries. Where the natural rate is equal to the market rate, it is difficult to afford the bare means of existence. At least a rise in the price of food is fatal to numbers of the labouring

examined whether the price of labour is the money rate of wages. It is never, he generally affirmed, in proportion as the market rate to the natural rate, and the mere cost of the commonest necessaries will the price of the necessaries affect the rate of wages.

The causes which regulate the rate of wages are understood, the folly of any legislation to fix the rate of wages is obvious. The seller of labour will always endeavour to obtain the highest price for it, which the purchaser will give if he be unable to obtain it for less. Labour is the most valuable subject that man has to buy or sell, and he will make the best bargain for himself in this no law ought to regulate.

Laws may purpose to affect wages directly or indirectly. Differences with the rate of wages frequently resorted to. By an act of parliament a legal rate of wages for particular employments was established, from which any deviation on the part of the employer was punishable. (See 25 Stat. 1; 34 Edw. III. c. 11; 1 R. 2. c. 8; 11 Hen. VII. c. 22; 1 James I. c. 6.) Unless the rate of high or low wages allowed be visionary, it is plain that laws can overrule them and establish a rate different from that which natural causes would have produced. Laws may embarrass the operations of the market and mischievously disturb the labour market; but it is not its immediate end—a consequence of wages. The experience of the country has long since put an end to the idea of legislation in this country; but the effect of laws upon wages is not the most pernicious interference with wages ever effected by the institution of a law, resulted from the administering the laws for the relief of the poor. Before these laws were passed in 1834, it was the practice, especially in the south, to give relief from the poor-law to labourers in proportion to the number of their children. The effect of this was to remove the

ordinary inducements to prudence in regard to marriage, and even to encourage improvidence. The farmers, taking advantage of the addition made to wages from the poor-rate, offered lower wages than would have sustained a family; and the labourer accepted them, because he was indifferent whether he received his pay from his employer or from the parish. The rate of wages thus became fixed, in agricultural districts, so low as barely to support an unmarried labourer; and as the parish would maintain a family, every man saw that by remaining single he would have no chance of improving his condition, and that by marriage he would be equally well and often better provided for. This system of relief injuriously affected both the market rate and the natural rate of wages. The market rate was completely disturbed; for a man was paid not according to the value and demand for his services, but in proportion to the number of his family. The natural rate was continually undergoing depression, because marriages being encouraged without reference to the sufficiency of wages to support a family, population was extraordinarily promoted. At the same time, the property destined to support it was suffering diminution, by being taxed heavily for the payment of comparatively unproductive labour.

The only sound mode of raising wages and improving the condition of a people is to promote and encourage the increase of the general wealth of a country [WEALTH], by every means which legislative science points out as best suited to that end; and at the same time to remove obstructions, and give facilities to the moral and intellectual improvement of the working classes. By these means capital will be increasing with the natural growth of population; while the labourers, with better habits, will be less prone to reckless improvidence, and consequently not so likely to outrun the increase of capital.

It is not unusual for persons in particular employments to desire higher wages, and to enter into combinations against their masters in order to obtain them. Such combinations were formerly prohibited both by the common and sta-

versive of the freedom and peace of society. Strikes, temperately conducted, cannot in principle be condemned: being often a necessary protection to the working classes. When masters are not dealing fairly with their workmen, the fear of a strike may often control them; especially as, when acting unjustly, they would find a difficulty in obtaining new hands. But where the cause of a strike or combination is not an occasional dispute concerning wages, but an attempt to limit the number of workmen by compulsory regulations and bye-laws, and to dictate to their employers, it is injurious to trade, and ultimately to the parties themselves. To the labouring classes at large such combinations cannot be beneficial. Whenever they are successful, it is by excluding many competitors, who are, of course, injured by the exclusion. The labour market must become clogged by a mass of exclusive trades, which render it difficult to find employment. The injury suffered by trade in consequence of the artificial limits to the supply of labour and the unnaturally high wages, must also have the effect of diminishing capital, and consequently the means of employing labour.

(Adam Smith's *Wealth of Nations*; Blackstone's *Political Economy and Taxes*.)

the original owner was not to be recovering his goods at any time he seized them first, they ran property. Various other runnives are merely legal curiosities.

Lord Coke distinguishes between stolen property, and which were the property of a party for a felony, which goods were forfeited on proof and finding of the fact of flight, even if the party were acquitted of the felony. 7 & 8 Geo. IV. c. 23, s. 57, the power in all cases, without respect to time, to make restitution of property to the owner, except in the case of instruments in the hands of a thief, who, without notice, have given them: and by 7 & 8 Geo. IV. the jury are no longer to be required to inquire whether a prisoner has committed a felony, and there is no forfeiture for such flight.

(5 Co., 169; *Comm. Dig.* tit. 10.)

WALES, PRINCE OF, a title usually borne by the eldest son or daughter of the King or Queen of Great Britain and Ireland. In the reign of Edward I. the eldest Prince was called the Lord Prince of Wales, and the eldest Princess the Lady of Wales.

own of England. There is a tradition that Edward, to satisfy the national rage of the Welsh people, promised to them a prince without blemish on account, a Welshman by birth, and he could not speak a word of English.

In order to fulfil his promise, he had sent the queen Eleanor, to reside at Caernarvon Castle, and he wed with the principality her son, ed of Caernarvon, then an infant, caused the barons and great men to do homage. Edward was not at that his king's eldest son, but on the death of brother Alphonso, he became heir ent, and from that time the title of e of Wales has ever been borne by eldest son of the king. The title is hereditary, but is conferred by special son and investiture; and was not e given immediately on the birth e heir apparent. Edward II. did teate his son Prince of Wales till he e years old, and Edward the Black e was not created until he was about e.

eldest son of the king or queen regis by inheritance Duke of Corn-

Edward the Black Prince was first ed Duke of Cornwall on the death of Edward I. his uncle, who was the Earl of Cornwall; and by the grant e which the title was then conferred, e 11th Edward III., the dukedom is ed by the eldest living son and apparent. If the duke succeed to the e, the duchy vests in his eldest son heir apparent; but if there be no e, the dukedom remains with the e heir presumptive being in no e added to it. The Black Prince e created by his father Earl of e and Flint. By the statute 21 e II. c. 9, the earldom of Chester eced into a principality, and it was ed that it should be given only to the e eldest son. Although that statute, e all the others in that parliament, epealed by the 1st Henry IV. c. 5, eardom has ever since been given e with the principality of Wales. e titles now borne by the Prince of e are "Prince of Wales and Earl of e, Duke of Saxony, Duke of Corn- e and Rothsay, Earl of Carrick, Baron

of Renfrew, Lord of the Isles, Great Steward of Scotland." As to the *Duchy of Cornwall*, see *Civil List*, p. 515.

(Selden's *Titles of Honour*, part ii. c. 5; Connack's *Account of the Princes of Wales*, 8vo. 1751.)

WAPENTAKE. [SHIRE.]

WAIL. [BLACKRAID; INTERNATIONAL LAW.]

WARD. [GUARDIAN; TENURE.]

WARDS. [MUNICIPAL CORPORATIONS, p. 366.]

WARDS, COURT OF. The Court of Wards and Liveries was established by the statute 32 Henry VIII. c. 36, to superintend the inquiries which were held after the death of any of the king's tenants by knight's service, for the purpose of ascertaining what lands the tenant died seized of, who was his heir, whether the heir was an infant; and thus what rights accrued to the king in the shape of relief, primer seisin, wardship, or marriage.

By the statute passed in the first Parliament of Charles II. (12 Charles II. c. 24), the Court of Wards was abolished. The preamble of the statute states that it had been interrupted since Feb. 24, 1645. [GUARDIAN; KNIGHT'S SERVICE.]

WARDHIP. [KNIGHT'S SERVICE.]

WAREHOUSING SYSTEM is a Customs regulation, by which imported articles may be lodged in public warehouses at a moderate rent, without being chargeable with duty until they are taken out for home consumption, and are exempt from duty if re-exported. This regulation gives valuable facilities to trade, is beneficial to the consumer, and ultimately to the public revenue. Where no such system exists, the merchant must either pay the duty on every article as soon as it is landed, or must enter into a bond with sureties for payment at a future time. If he pays at once, he is obliged to advance a large capital, on which interest must be charged to the consumer until the goods be sold; or he must effect an immediate sale, perhaps at an inadequate profit, or even at a loss, in order to raise the funds necessary to pay the duty. If he wishes to defer the payment until the market shall offer an advantageous sale, he may find it difficult to induce persons to become his sureties.

proposed a remedy for these evils was Sir Robert Walpole, in his celebrated Excise scheme, in 1733. His object was to unite the Excise laws with those of the customs as regarded wines and tobacco, and to charge a small duty immediately on importation, and the remainder on being removed from the Excise warehouses for home consumption. Speaking of tobacco, he thus explained his proposal:—"If the merchant's market be for exportation, he may apply to his warehouse-keeper, and take out as much for that purpose as he has occasion for, which, when weighed at the custom-house, shall be discharged of the three farthings per pound with which it was charged upon importation; so that the merchant may then export it without any further trouble. But if his market be for home consumption, that he shall then pay the three farthings charged upon it at the custom-house upon importation; and that then, upon calling his warehouse-keeper, he may deliver it to the buyer, on paying an inland duty of 4d. per pound to the proper officer appointed to receive the same." Walpole clearly foresaw the advantages of his scheme to the carrying trade. "I am certain," he said, "that it will be of great benefit to the revenue,

fully explained in Ellis's '*Laws, and Regulations*,' vol. II., 377, edition 1841; and '*Yearly of Trade*,' for 1846, by Charles

The main objection to Sir Robert Walpole's scheme was that the war was compulsory; but, under the law, it is at the option of the merchant. Amongst other privileges enjoyed by a merchant, he may remove any goods from one port to another, by sea or inland carriage, to be warehoused again. The revenue is said to be sustained little or no loss in these cases, and it naturally becomes a question should warehousing be confined to ports? It is obvious that the warehousing on the spot must be convenient to the merchants and of inland towns, and no reason assigned for not conceding it, as security to the revenue. But if goods be removed with safety from Hull, they could be removed with safety from Liverpool to Manchester, from Hull to York. Governments incur no expense in erecting warehouses as they would be provided by capitalists, in the same manner as docks and warehouses in London, Liverpool, and other ports. A com-

France as 1664, M. Turgot established it in France; but it was discontinued in 1793, except for merchandise imported from the East and West Indies and Guiana, or exported thereto. In 1805 the system was re-established in a more extensive manner, but was confined to certain sea-ports, until 1832, when it was extended to several of the principal cities of the interior. Warehousing both at sea-ports and at certain inland towns is permitted in Holland. In Belgium, Denmark, and other commercial countries, the system has also been adopted. In the United States of America, its adoption was recommended not only on account of its importance to trade, but for a novel reason—its republican tendency. The president, in his message of December, 1842, said that, without such a system of paying the duties, "the rich capitalist, abroad as well as at home, would possess, after a short time, an almost exclusive monopoly of the import trade, and laws designed for the benefit of all would thus operate for the benefit of the few—a result wholly incongenial with the spirit of our institutions, and anti-republican in all its tendencies."

WARRANT. A warrant is a delegation by A, who has power to do some act, of that power to B. As a man has power to manage his own concerns, he may give a warrant of attorney to another to act or manage on his behalf. A sheriff who has power to arrest, &c., may give a warrant to his bailiff to act for him. A landlord who has power to make a distress upon his tenant may give a warrant of distress to another for that purpose. A magistrate who has authority to bring before him persons who are within his jurisdiction, and reasonably suspected of having committed certain offences, may make a warrant to others to do that act. A warrant should be in writing, and ought to show the authority of the person who makes it, the act which is authorized to be done, the name or description of the party who is authorized to execute it, and of the party against whom it is made; and in criminal cases, the grounds upon which it is made. The sense in which the word warrant is more

generally known relates to criminal matters. A justice of the peace has power within his own jurisdiction to apprehend a person whom he has seen commit an offence in which he has jurisdiction. He may also verbally direct, that is, give a verbal warrant to others to arrest such person in his own presence. He may also give a warrant in writing to apprehend in his absence such person, or any person against whom he has reasonable cause of suspicion from the information of others. The warrant should always be under the hand and seal of the justice. It should be addressed to the constable or constables, or to some private person by name; and the constable or the private person acting within the justice's jurisdiction will not be liable for any of the consequences of obeying a proper warrant. The warrant should name the person against whom it is directed. A warrant to apprehend all persons suspected, or all persons guilty, &c., is illegal; for the pointing out the individual person to be apprehended is the function of the justice, not of the officer. The law as to this was laid down by Lord Mansfield in the case of *Money v. Leach*, 3 Bur. 1742, where the warrant, being of the form called a general warrant, and which had been in use since the Revolution down to that time, directing the officers to apprehend the 'authors, printers, and publishers' of the famous No. 45 of the 'North Briton,' was held to be illegal and void. The warrant should also set forth the time and place of making it, and the cause for which it is made. A warrant may be to bring the party before the justice who grants it, or before any justice of the same county. A warrant of a justice of one county cannot be executed in another until it has been backed, that is, signed by some justice in that other county; and the same provision has been also enacted with respect to warrants granted in any one of the three kingdoms, and requiring to be executed in any other. But a warrant granted by one of the judges of the Court of Queen's Bench is tested England, and may be executed in any part of the kingdom. A warrant is in force until it has been ex-

has been said as to a warrant of apprehension is equally applicable to a Warrant of Commitment, which is the document by which a justice authorizes a commitment of a party to prison, either to suffer a summary punishment or to await his trial. The same matters are essential as to showing the authority, the parties, the cause, and the purpose of the warrant. A Search Warrant is a document which authorizes a search to be made for stolen goods. (Burn's Justice.)

A Warrant of Attorney is a writing by which a man authorizes another to do an act for him, or as his agent or deputy. [LETTER OR POWER OF ATTORNEY.] But the term is most commonly applied to cases where a party executes an instrument of that name, authorizing another to confess judgment against him in an action for a certain amount named in the warrant of attorney. [COGNOVIT.]

WARRANT OF ATTORNEY AND COGNOVIT. [COGNOVIT.]

WARREN. A Free Warren is a franchise which gives a right to have and keep certain wild beasts and fowls, called game, within the precincts of a manor, or any other place of known extent, whereby the owner of the franchise has a property in the game, and a right to exclude all other persons from hunting or taking it,

except by prescription; and as it is held with the manor, it does not require a grant of the manor without the tenancies; nor if it be held in gross, it pass by a grant of the manor and the tenancies. (3 N. & M. 671.) The rights with respect to game which belong to lords of manors are reserved them by statute. [MANOR.]

It does not appear that the lord had the right of granting free warren to one person over the lands of another, though such a right might be acquired by prescription. The right of free warren over the land of another might be acquired under other circumstances, as a man, having free warren over his own lands, aliened them, reserving free warren. (8 Rep., 108.)

A warren may lie open, and it is not necessary of enclosing it, as the case of park. (4 Inst., 318.) The franchise of free warren appear to be only hares, rabbits, and fowls; and the fowls of warren are partridges and pheasants, though it may include also quails, woodcocks, and wild geese. (Terms de la Ley, 589.) The person appointed to preserve the game, called a gamekeeper, who is justified in killing dogs, cats, or other vermin which he finds

WASTE, says Coke (Co. Lit. 53), "wastum dicitur a vastando, of wasting and depopulating;" but he gives no further explanation. The notion of waste seems to be when a tenant for years, by the course, by dower, or for life, so deals with land, or such things as are attached to the soil, as to destroy them or greatly damage them. Accordingly the old action of waste lay against such tenants by him who had the immediate estate of inheritance. Waste is either *voluntary*, which is an act of commission, or *permissive*, which is a matter of omission only.

Voluntary Waste chiefly consists in pulling timber trees, pulling down houses, or permanently altering any part of a house, in opening new mines or quarries, in changing the course of husbandry, and in the destruction of heir-looms.

Permissive Waste consists chiefly in allowing the buildings upon an estate to go to decay. It is a general rule that the waste which arises from the act of God is excusable, as if a house falls in consequence of a tempest. But if the destruction of the house by the tempest has been owing to its being out of repair, the tenant is guilty of waste; and so he will be if he do not repair a house which has been uncovered or damaged only by a tempest. In the same manner, if the banks of a river, while in a state of proper repair, are destroyed by a sudden flood, the tenant is not answerable. (1 Inst., 58 a, b.) The rule applies also to the case of a house burnt down by accident. (2 Ann. c. 31, s. 5.) But in these and all similar cases the tenant will still be bound to repair or rebuild, if he has entered into a general covenant to repair. [TENANT AND LANDLORD.]

Tenants in tail, as they have estates of inheritance, are entitled to commit every kind of waste; but this power continues and can be exercised only during the life of the tenant in tail. When it is said that a tenant in tail may commit every kind of waste, the meaning is that he can do those acts to the land which tenants who have not an estate of inheritance cannot do. Tenants in tail after possibility of issue extinct, are not impeachable for waste, but, like tenants for life when their es-

tates are given without impeachment of waste, they may be restrained from wilfully destroying the estate. (3 Cha. Ca. 32.) A mortgagee in fee in possession has a right at law to commit any kind of waste, being then considered as the absolute owner of the inheritance; but he will be restrained by a court of equity, which will direct an account of timber cut down, and order it to be applied in reduction of the mortgage debt. (2 Vern. 592.) Copyholders cannot, unless there be a special custom to warrant it, commit any kind of waste, and every species of waste not warranted by the custom of the manor operates as a forfeiture of the copyhold. (13 Rep., 68.)

The original remedy for waste was that under the statute of Marlbridge, 52 Henry III. c. 24, which gave to the owner of the inheritance an action of waste against the tenant for life, in which he was entitled to recover full damages for the waste committed. But as this remedy was often found inadequate, it was enacted by the statute of Gloucester, 6 Edw. I. c. 4, that the place wasted should be recovered, together with treble damages for the injury done to the inheritance. No person was entitled to an action of waste against the tenant for life under these statutes, except him who had the estate of inheritance immediately expectant on the determination of the estate for life; so that if there were an existing estate of freehold interposed between the estate for life and that of inheritance, the right of action was suspended. (1 Inst., 53, b.) The action of waste had long given way to the much more expeditious and easy remedy by an action of trespass on the case in the nature of waste, which may be brought by the person in reversion or remainder for life or for years, as well as in fee, and in which the plaintiff is entitled to costs, which he could not have in an action of waste (3 Saunders, 282, n. 7); and the writ of waste is now finally abolished by the 3 and 4 Wm. IV. c. 27, s. 50. It seems that there was formerly no remedy for mere permissive waste after the death of the tenant, though if the estate of the tenant was benefited by the injury inflicted, as if a house

was derived to it from the sale of trees cut down, an action for the value of the property might have been sustained against the executor. (Cowp. 376.) Now however, by the 3 and 4 Wm. IV. c. 52, s. 2, remedies by action of trespass or trespass on the case are given against the executors of any deceased person for any wrong committed by him in his lifetime against the real or personal property of another within six months of his death, provided the action be brought within six months after the personal representatives have taken upon themselves the administration of the estate.

But the most complete remedy in cases of waste is that in the Court of Chancery, which, upon application to it by bill, will not only direct an account to be taken and satisfaction to be made for the damage done, but will interpose by way of injunction to restrain the commission of future waste. A Court of Equity will grant its assistance against the commission of waste wherever the case appears to require it, even though the plaintiff is not in a condition to maintain an action at law. (3 Atk. 91, 211, 723.) The court will also grant an injunction against waste *pendente lite*; and in such cases it is not necessary that the plaintiff should wait till waste is actually committed; it is sufficient if an intention to commit waste appears, or if the defendant insists upon his right to do so. (2 Atk. 182.)

It has long been usual when estates for life are expressly limited, to insert a clause declaring that the tenant shall hold the lands "without impeachment of waste." These words were originally intended merely to exempt the tenant from the penalties of the statute of Marlbridge, though it has long been settled that they enable him to cut down timber and to convert it to his own use; but he may be restrained in equity from committing malicious waste so as to destroy the estate, or cutting down timber, which serves for shelter or ornament to a mansion-house, or timber unfit to be felled. (2 Vern. 738; 3 Atk. 215.) This is what is called the doctrine of Equitable Waste. The privileges of the tenant for *life* under the words "without impeach-

ment of waste" are annexed in privity to his estate, and determine with it. Thus it seems that if a lease were made to one for the life of another without impeachment of waste, with remainder to him for his own life, he would become punishable for waste, the first estate being merged in the second. (11 Rep. 83, h.)

Ecclesiastical persons, who hold lands in right of a church, are disabled from committing waste, though, like other tenants for life, they have the right to take from the land materials for necessary repairs. They may not only fell timber and dig stones for that purpose, but have even been allowed to sell timber or stone, when the money was to be applied in repairs; also, though they cannot open mines, they may work those already open. (Amb. 176.) Ecclesiastical persons may be proceeded against for waste in the civil as well as the ecclesiastical courts. It has been held that an action on the case will lie against them for dilapidations, and may be brought by the successor to a benefice either against his predecessor or his personal representatives. (3 Lev. 268; 1 T. R. 630.) It seems doubtful whether the courts of common law have any power to issue a prohibition against the commission of waste by ecclesiastical persons. (1 Bos. and Pull. 105.) But there is no doubt as to the jurisdiction of the Court of Chancery to grant an injunction against any ecclesiastical person whatsoever to stay waste in cutting down timber, pulling down houses, or opening quarries or mines on the glebe. The proper person to make the application is the patron of the living, or, when the living is in the crown, or the application is made against a bishop or a dean and chapter, the attorney-general on behalf of the crown. (3 Mer. 421.) But the patron of the living in such cases has no right to an account, for he cannot have any profit by the living. (Amb. 176.) An injunction has been granted against waste by the widow of a rector during the vacancy of the living. (2 Bro. cc. 5, 62.) By the 56 Geo. III. c. 52, the incumbents of benefices are enabled to cut down timber on the glebe-lands for the purposes of the statute (55 Geo. III.) enabling them to

exchange their parsonage-houses or glebelands.

Tenants in tail and tenants in fee have the inheritance in the land, and they are the real owners. Those who have less estates are in the situation of the Roman *Usufructuarius*. [*USUFRUCTUS*.]

(See Bacon's 'Abridgment,' art. *Waste*.)

WATER AND WATERCOURSES.

The right of conducting water through one piece of land for the use of another is an incorporeal hereditament of the class of easements, and was known in the Roman law by the name of the *servitus aquæ ductus*. The right of taking water out of the well or pond belonging to another person is an incorporeal hereditament of the class of profits called in the Roman law the *servitus aquæ hæustus*. These rights, in our law, must be either derived from a grant or established by prescription. [*PRESCRIPTION*.]

It is the law of England that water flowing in a stream is originally *publici juris*, that is to say, a thing the property of which belongs to no individual, but the use to all. The legal presumption is that the proprietor of each bank of a stream is the proprietor of one-half of the land covered by the stream, but there is no property in the water. Every proprietor has an equal right to use the water which flows in the stream, and consequently no one can have the right to use the water to the prejudice of any other without his consent. No proprietor can either diminish the quantity of water which would otherwise descend upon the proprietors below, nor throw back the water upon the proprietors above, so as to overflow or injure their lands. For the same reason, no proprietor has a right to use the water of a stream so as to injure its quality to the detriment of other proprietors.

The only modes in which a right to the use of running water, in a manner inconsistent with the common law rights of others can be established, are either proof of an actual grant or licence from the persons whose rights are affected, or proof of an uninterrupted enjoyment of such a privilege for such a period as the law considers sufficient to constitute a

right by prescription. The period of twenty years had been generally fixed upon by the courts of law and equity for this purpose, and the same period has been adopted in the Prescription Act (2 & 3 Wm. IV. c. 71, s. 2). [*PRESCRIPTION*.] But if water has not been appropriated, it seems that the person who first appropriates and renders it useful acquires a right, and for a violation of such right an action may be maintained on an enjoyment of less than twenty years. It has been decided that after the erection of works and the appropriation by the owner of the land of a certain quantity of the water flowing over it, if a proprietor of other land afterwards take what remains of the water before unappropriated, the first-mentioned owner, however he might before such second appropriation have taken to himself so much more, cannot do so afterwards. (6 East, 219.) The privilege of a watercourse is not confined to private individuals. It may be vested in a corporation, or may be claimed by the inhabitants of a township or parish. If land with a run of water upon it be sold, the water *primâ facie* passes with the land; but it is laid down by Coke that if a person grants *aquam suam*, the soil will not pass, but only a right of fishing in that water; for the proper words in that case to pass the soil would be, so many acres of land *aquâ coopertas*: whereas the word *stagnum*, or pool, will pass both water and land. (1 Inst., 4, h.) The exclusive right to a flow of water once acquired can only pass by grant as an incorporeal hereditament, and a licence, by parol or otherwise, to use or take the water at any place, may be revoked even without an express power of revocation being reserved, unless works have been constructed and expenses incurred upon the faith of it. (5 B. & Ad., 1.)

When the owners of property have, by long enjoyment, acquired special rights to the use of water in its natural state, as it was accustomed to flow, and not merely a use, which is common to all the king's subjects, an action may be maintained for a disturbance of the enjoyment; but where the injury, if any, is to all

the king's subjects, the only remedy is by indictment. The mere obstruction of water which has been accustomed to flow through a person's lands does not in itself afford a ground of action. The plaintiff in such an action must be enabled to show either that some benefit arose to him from the water going through his lands, of which he has been deprived, or at least that some deterioration was occasioned to the premises by the obstruction of the water; but where the proprietor of the lands can prove that he is injured by the diversion of the water, it is no answer to his action to show that the defendant was the first person who appropriated the water to his own use, unless he has had twenty years' undisturbed enjoyment of it in its altered course. If the injury occasioned by the diversion or obstruction of water is of a permanent nature and injurious to the reversion, an action may be brought by the reversioner, as well as by the tenant in possession, each for his respective loss.

The diversion of watercourses or injury to their banks so as to cause inundation are nuisances against which a court of equity will protect parties by injunction; and if there be a question as to the right to the flow of water, an issue will be directed to try it. Although a court of equity will not in terms decree the banks of rivers, watercourses, or navigable canals to be repaired, the effect of such an order may be obtained by an order that parties shall not be at liberty to use them while out of repair, or against their impeding the use of them by the obstructions consequent upon a state of disrepair. An injunction may also be obtained against conducting the water from one man's tenement upon that of another to his injury by drains or otherwise, in a manner in which it has not been accustomed to flow. And it may be laid down generally, that, with respect to water and watercourses, the aid of a court of equity may be obtained for the purpose either of restraining injury or of quieting possession. (Foulblank, *On Equity*.)

WAY, *Chimin* (from the French *Chemins*), is a term used to denote either a

right, in one person or more, of passing over the land of another, or the space over which such right is exercisable. In the former sense a way is an incorporeal right of the class called *HEREDITARIES*.

There are five kinds of way:—1, A foot-way, for persons passing on foot only; 2, a horse-way, for persons passing on horseback, but including a foot-way; 3, a drift-way, for driving cattle; 4, a carriage-way, for leading or driving cars and other carriages, always including a foot and horse-way, and usually, but not necessarily, including a drift-way; 5, a water-way for ships and boats. [*HEIN*]

All these may be either private or public ways. Private ways are enjoyed by particular persons or classes; public ways are open to all persons; hence such a way is said to be *communis utriusque*, or *alta via regia*—in the language of pleading, a common and public queen's highway.

1. The proper origin of a private right of way is, a grant from the owner of the soil.

Such a grant may be made to a party, or to him and his heirs *in gross*; i. e. without respect to any land or house of which he may be the owner or occupier, or to the grantee, his heirs, and assigns, being owners of such a house or close, in which case the right granted will be *appurtenant* to the house or close in which the grant is annexed, and the right will pass with the house or close.

The grant of a way may be either express or implied; and in the case of an express grant, the grantor may impose such restrictions upon his grant as he thinks proper. If a man at the time when he conveys part of his land to another, has no access to the land conveyed, except over the land which he reserves, the grant of a right of way over the land reserved is implied. If a man conveys part of his land, and has no access to the part reserved, except over the land conveyed, a right of way over the land conveyed is impliedly reserved. The way so impliedly granted or reserved is called a "way of necessity."

Where no deed can be produced whereby a way is expressly or impliedly cre-

ated, the party who claims the way may, in the case of a long-continued user of the right without evidence of commencement or interruption within the period of legal memory, plead that it has been immemorially enjoyed by him and his ancestors in the case of a way in gross, or by him and all those whose estate he has, in the house or close to which the way is annexed, in the case of a way appendant (*i. e.* immemorially appurtenant).

Until lately also, a lost grant would be presumed in ordinary cases, after an uninterrupted and unexplained user of 20 years. The rule of law as to prescription for ways is settled by 2 and 3 Wm. IV. c. 71, § 2. [Prescription.]

A grant of a right of way made by a person who has only a limited estate in the land over which the way passes, is effectual only during the continuance of the estate of the grantor. If a claim to a right of way is set up in respect of the 20 years' or the 40 years' enjoyment mentioned in the statute, if it appear that the land over which the right is claimed has, during the whole or part of the 20 or 40 years, been in the occupation of a party who had a limited estate in such land, not only is no right of way acquired against the reversioner, but no right whatever is gained by the user. (4 Tyrwh. 559; 1 Cro. M. & R., 217.) As to the construction of this act, see 6 N. & M. 230; 4 Ad. & Ell. 369; 11 Ad. & Ell. 688, 788.

The party to whom a private road is allotted under the general enclosure act, has a statutory right of way.

If the party entitled to a way becomes the owner of the land over which it passes, the right of way is extinguished if the party has the same extent of interest in the land and in the way. But if the one be held for an estate different in extent or duration from the other, the right is only *suspended* during the union of the two interests. Even where a right of way is extinguished by unity of possession, it will, in some cases, revive upon a severance of that unity, as by partition among parceners, &c. A private right of way may also be extinguished by a deed of release executed by the party

who is entitled to such way; and such a release may be presumed from a non-user for 20 years or from a declaration made by the party that he has no such right.

A way of necessity is limited by the necessity out of which it has arisen. If the party to whom such a way is impliedly granted, or by whom it is impliedly reserved, becomes entitled to some other access to his land, equally direct, the way of necessity is gone.

The particular rights of the grantee of a private way continue to exist notwithstanding the owner of the land may have dedicated it to the public as a highway.

By the general enclosure act (41 Geo. III. c. 102) all roads, private as well as public, within the district, not set out by the commissioners, are declared to be extinguished.

The grantee cannot throw the burthen of repairing the way upon the grantor, unless by the terms of the grant, evidenced by the deed or by user, the grantor has engaged to enable the grantee to use the way. In the ordinary case, where the right and the liability to repair the way are in the grantee, he is not entitled to go upon the adjoining land when the direct way is impassable (4 Maule and Selw., 387); whether he may do so where the state of non-repair is caused by the wrongful act of the occupier of the land, or where the liability to repair rests upon the latter, does not appear to have been decided.

If the occupier of the land over which a private way passes, or any other person, obstruct the way, the party entitled to the way may remove the obstruction, and he may also bring an action on the case, or, in some cases, an action of covenant against the obstructor. On the other hand, if the occupier of the land resisting the claim of a right of a way, bring an action of trespass against the person exercising the alleged right, the defendant may plead in justification a title founded upon prescription, grant, reservation, or statute.

II. Between private ways and public ways stand what may be called *quasi* public ways, which partake of the

qualities of both, but differ in some respects from each. By some writers these are classed among private, by others, among public ways; they seem more properly to constitute a distinct intermediate class. Such are ways which the inhabitants of a town, &c., have immemorially used from their town, &c., to a church or market. A right of this description cannot, in modern times, be created. It cannot be the subject of a grant, inasmuch as inhabitants, as such, are not at this day capable of taking any interest by grant; nor can it, like a public way, be created by dedication, as the dedication of a way can only be to the public at large. Such a right therefore can exist only as the consequence of an antient custom.

III. A highway is created where the owner of the soil has, by express words or by some act done or forbore, declared his intention that the public shall have the use of a way over such soil. The dedication of a way to the public may be by writing or by words; so that it may be inferred from the acts of the party, as the throwing down of fences, or from mere tacit acquiescence where the acquiescing party is in possession of the land, and therefore has the means, if disposed so to do, of preventing the use of the way. In all cases, however, it is necessary that the party dedicating should have a sufficient interest in the land to warrant such dedication. If he has a less estate than a fee-simple, his dedication will not bind the reversioner. But it would also appear that the owner of such a limited estate could not even dedicate a highway to the public for the limited period of his interest in the soil, and that his attempted dedication, however distinctly and formally made, would amount to nothing more than a licence revocable at pleasure.

When there is no express dedication, the presumption of an intention to dedicate, arising out of the conduct of the party, may be rebutted; as by showing that when the public were first admitted a bar or a chain was occasionally placed across the road, whereby passengers might, at times, be excluded; although

it should also appear that the bar, &c., had long been omitted to be used, or that it had been suffered to fall into decay, or had been actually broken down, and that no attempt had afterwards been made to restore it.

A highway is frequently created by statute, principally under inclosure acts.

Whatever may have been the origin of a highway, it cannot, at common law, be destroyed or altered, except after an acquisition taken upon a writ of *ad quod damnum*.

By the common law the burden of maintaining highways is thrown upon the occupiers of lands and tenements within the parish, or rather within the township in which the way is situated. But particular persons may be bound to repair a highway. This special liability may exist by reason of enclosure (*ratione coarctationis*), against parties who have enclosed the sides, or one side of the road, and have thereby lessened the liabilities for breaking out into the adjoining lands where necessary; or by reason of the possession of lands (*ratione tenementis*), which have by some means become chargeable with the burden. In the case of a corporation aggregate, a liability to repair may also be established by prescription only, or antient usage without enclosure or tenure.

Any obstruction or other nuisance on a highway may be abated or removed by any person who chooses to undertake the task. The wrong-doer may also be proceeded against by indictment as for a misdemeanor; but he is not liable to an action, as he is in the case of a nuisance to a private or to a quasi-public way, except in respect of special damage.

The regulation of highways has frequently been made the subject of legislative interference. The statute now in force is the 5th and 6th William IV. c. 50.

In the case of a way over water, river, private, quasi-public, or public, if the course of the water alter by sudden or gradual change, the way is continued over the new course. Every navigable river, arm of the sea, or creek, is a highway for ships and boats. [Rivers.]

HEALTH. [POLITICAL ECONOMY.]
 HEALTH OF NATIONS. [POLITICAL ECONOMY.]

WEIGHTS AND MEASURES. We first describe the English weights and measures as they stood on the last of the year 1825, immediately before introduction by law of the Imperial measures, with some remarks on their state at different times.

Troy Weight.—The pound is 12 lb; the ounce is 20 pennyweights; anyweight is 24 grains. The pound is 7000 grains. There is but one grain, whether troy or avoirdupois, and the inch of pure water is 252·458 (barometer 30 inches, thermometer 59°). A cubic foot of water is 74 pounds troy. Only gold and silver are measured by this weight. It is to say that precious stones are also measured by troy weight; but, as may be seen, the measure of these is the same as the troy weight.

The diamond is measured by carats, of 151½ to the ounce troy; so that carat is 3½ grains, very nearly. In the old foil measure still exists; the pearl grain is one-fifth less than troy grain.

Apothecaries' Weight.—In dispensing medicines, the pound troy is divided into 12 ounces, the ounce into 8 drams, the dram into 3 scruples; consequently scruple is 20 grains. But in buying and selling medicines wholesale, avoirdupois is and always has been used. It seems to be that in the first instance the more precious drugs, as musk, weighed by troy weight, in the same manner as the more precious metals; but the common medicines were divided by fractions of what was then the common pound.

Apothecaries' Fluid Measure.—In the new edition of the 'Pharmacopœia,' the College of Physicians prescribed the use of the following measures—60 minims make a fluid dram; 8 drams a fluid ounce; 20 fluid ounces a pint. For water this is actual measure as well as measure, since the imperial pint is 20 ounces avoirdupois of water; but for other liquids the fluid ounce must merely be considered as a

name given to the 20th part of a pint. The minim of water is as nearly as possible the natural drop; but not of other substances, the drops of which vary with their several tenacities.

According to Dr. Young (who has reduced them from Vega), the apothecaries' grains used in different countries are as follows:—1000 English grains make 1125 Austrian, 956 Bernese, 981 French, 850 Genoese, 958 German, 978 Hanoverian, 989 Dutch, 860 Neapolitan, 824 Piedmontese, 864 Portuguese, 909 Roman, 925 Spanish, 955 Swedish, 809 Venetian.

Avoirdupois Weight.—The pound is 16 ounces, and the ounce 16 drams; the modern pound is 7000 grains (the same as the troy grains); whence the dram is 27 grains and 11-32nds of a grain. The hundredweight is 112 pounds, and the ton 20 hundredweight. The cubic foot of water is 62·3210606 pounds avoirdupois. The stone is the 6th part of the hundredweight, or 14 pounds. The ton of shipping is not a weight but a measure, 42 cubic feet, holding 24 hundredweight of sea-water. Down to the statute of Geo. IV. the avoirdupois pound varied a little, according to the notion of the writer: Dilworth makes it 6999½ grains; Dr. Robert Smith, 7000 grains; Bonycastle, 6999½ grains. That act declares "that seven thousand such grains shall be, and they are hereby declared to be, a pound avoirdupois."

Long Measure.—Three barleycorns make an inch, 12 inches a foot 3 feet a yard, 5½ yards a pole or perch,* 40 poles a furlong, 8 furlongs (1760 yards) a mile. Also 2½ inches are a nail, 3 quarters of a yard a Flemish ell, 5 quarters an English ell, 6 quarters a French ell. A pace is 2 steps, or 5 feet; a fathom is 6 feet. The chain is 22 yards, or 100 links; 10 chains make a furlong, and 80 chains a mile. The barleycorn is now disused, and the inch is sometimes divided into 12 lines (as in France), but oftener into tenths or eighths. The yard is frequently called an ell in old books; commonly, *Reccorde* says. *Mellis* says

the fluid ounce, when it is an ounce, is an ounce avoirdupois.

* In recent times the word *perch* has been almost confined to the square perch.

is not noted in the 'Pharmacopœia' that it is 12.

square chain, or four square perches. Four square perches were anciently called a day's work. The rod* is the same word as rod: Mellis says four rods make an acre. The old terms which have come down from 'Domesday Book' at latest, the hide, plowland, carucate, and oxgang, are wholly unsettled as to what magnitudes they meant.

The cubic measures, or measures of capacity, do not immediately depend upon the cubic foot, except in the case of timber. Forty cubic feet of rough timber, or fifty feet of hewn timber, make a load.

The preceding measures have been untouched by the act which introduced the imperial measures. The old measures of capacity, the wine measure, ale and beer measure, and the dry measure, are now replaced by the imperial measure.

Old Dry or Corn Measure.—The gallon is 268.6 cubic inches. Two pints make a quart, two quarts a pottle, two pottles a gallon, two gallons a peck, four pecks a bushel, two bushels a strike, two strikes a comb or coomb, two coombs a quarter (eight bushels), five quarters a wey or load, and two weys a last. In measuring grain, the bushel is struck; that is, the part which more than fills the measure is scraped off. Most other

Moore, &c. mention the water five pecks to a bushel (11 Hour 4), and always in conjunction measure; it means a dry measure at the waterside, and lime, so salt were measured by it. The dry bushel was called the bushel; this name is a remnant of King Edgar, who ordered specimens kept at Winchester legal standards.

Old Wine Measure.—The tuns 231 cubic inches. Four pints, 2 pints a quart, 4 quarts 16 gallons a rundlet, 31½ gallons 42 gallons a tierce, 63 gallons head, 2 tierces a puncheon, 3 a pipe or butt, 2 pipes a tun. Pipes of foreign wine depend on measures of their different countries on the above. The rundlet are generally omitted, but are found in writers of the sixteenth century. Mellis gives 18½ gallons, and way* 18 gallons, to the rundlet merely means the third part and the puncheon was antiently the tercian (of a tun). The two quarts) formerly existed. of brandy, a foreign measure relatively recent introduction in

a quart, 4 quarts a gallon, 9
skin, 2 skins a kilderkin,
a barrel, 1½ barrels a hogs-
heads a butt, 2 butts a tun.
In 1803, when the two mea-
sures assimilated by statute, this
measure, and the ale mea-
sured from it in that 8 gal-
a firkin. Nothing above a
mentioned in the oldest tables,
a (two quarts) is introduced,
is sometimes called a last.

Measure.—This measure su-
old corn, wine, and beer.
The gallon contains 277·274
and is 10 pounds avoirdupois.
four gills are a pint, 2 pints
quarts a gallon, 2 gallons a
a bushel, 8 bushels a quar-
ters a load. Of these the gill
is not named in the statute,
ived from common usage.
d measure was allowed, three
a sack, and twelve sacks a
This heaped measure was
by 1 & 5 Wm. IV. c. 49, and
it was re-enacted by 3 & 4
65, which repealed the for-
wards leave the higher mea-
sures, &c., to custom, considering
entirely as merely names of
in fact they are, and leaving
gauged in gallons. It must
ed that in former times any
which was generally made
one in time to the dignity of
of the national measure.

Stones.—Seven pounds make
over a stone, 2 stones a tal-
y, 2 weys a sack, 12 sacks a
Pathway's points out the sty-
word cloves; it calls them
mills." It is to be observed
each is 12 fods, and a fod 28
that the sack is 364 pounds.
his was arranged (31 Edward
according to the lunar year
s of 28 days each. The rea-
was that the multitudes of
ation the spinning of wool

formed a part might instantly be able to
calculate the supply for the year or month
from the amount of the day's work; a
pound a day being a tod a month and a
sack a year.

Tale or Reckoning.—If we were to
collect every mode of counting, this would
be the largest head of all. The dozen,
the gross of 12 dozen, and the score, are
the only denominations not immediately
contained in the common system of nu-
meration, which are universally received;
and in all cases, by a dozen, a score, a
hundred, a thousand, &c., were signified
different numbers, composed of the arith-
metical dozen, score, &c., together with
the allowances usually made upon taking
quantities of different goods. The
"baker's dozen," for instance, which has
passed into a proverb, arose from its
being usual in many places to give 13
penny loaves for a shilling. The in-
creased dozen, hundred, &c., were some-
times called the long dozen, long hundred,
&c.; and this phrase is sometimes heard
in our own day, when a dear price is
called a "long price." The 12 dozen
was formerly called the small gross, and
12 small gross made the great gross.
The hundred was more frequently 120
than 100, the thousand generally ten
hundred. Ten thousand was frequently
called a last; and it is to be observed
that the word last was frequently (almost
usually) applied to the highest measure
of one given kind. The *shock* was always
60; the *dicar*, or *dicker*, always 10, as
the name imports. In measuring paper
(1594) the quire was 25 sheets, the ream
20 quires, and the bale 10 reams. By
1650 the practice of reckoning 24 sheets
to the quire (now universal) had been in-
troduced as to some sorts of paper. Tale-
fish, as those were called which were
allowed to be sold by tale, were (22 Edw.
IV. cap. 2) such as measured from the
bone of the fin to the third joint of the
tail 10 inches at least.

WEIR, or WEAR, is a dam erected
across a river, either for the purpose of
taking fish, or conveying a stream to a
mill, or of maintaining the water at the
level required for the navigation of it.

The erection of weirs across public
rivers has always been considered a

abolished in Scotland two centuries
ago by neglect in the act of 1525.
assent did not obtain for it the
duration, according to Mr. McCul-

public nuisance. Magna Charta (c. 23) directs that all weirs for the taking of fish should be put down except on the sea-coast. By the 12 Edw. IV. c. 7, and other subsequent acts, weirs were treated as public nuisances, and it was forbidden to erect new weirs, or to enhance, straighten, or enlarge those which had aforetime existed. Hence in a case where a brushwood weir across a river had been converted into a stone one, whereby the fish were prevented from passing except in flood-time, and the plaintiff's fishery was injured, this was considered to be a public nuisance, although two-thirds of the weir had been so converted without interruption for upwards of forty years. And it was laid down in that and other cases, that though a twenty years' acquiescence might bind parties whose private rights only were affected, yet that no length of time can legitimate a public nuisance. (7 East, 198; 2 B. & Ald. 662.) On the same grounds it will probably be held that the Prescription Act (2 and 3 Wm. IV. c. 71) does not apply to weirs. It appears therefore that no weirs can be maintained on any rivers to the prejudice of the public, or even, as it seems, of individuals, except such as have existed time out of mind, or such as have been erected under local acts of parliament for the navigation of particular rivers.

The provision of the Roman law as to the maintenance of public rivers (*flumina publica*) against any impediment to navigation, or against any act by which the course of the water is changed, are contained in the Digest (43. tit. 12, 13).

WESTMINSTER ASSEMBLY OF DIVINES. One of five bills to which it was proposed by the parliamentary commissioners that King Charles I. should give his consent in the negotiations at Oxford (from 30th January to 17th April, 1643) was entitled 'A Bill for calling an Assembly of learned and godly Divines and others to be consulted with by the Parliament for the settling of the government and liturgy of the Church of England, and for the vindication and clearing of the doctrine of the said church from false aspersions and interpretations.' This bill was afterwards converted into 'An Ordinance of the Lords and Com-

mons in Parliament,' and passed 13th June, 1643.

The persons nominated in the ordinance to constitute the assembly consisted of a hundred and twenty-one clergymen together with ten lords and twenty commoners as lay assessors. Several other persons (about twenty in all) were appointed by the parliament from time to time to supply vacancies occasioned by death, secession, or otherwise, who were called superadded divines. Finally, two lay assessors, John Lord Maitland and Sir Archibald Johnson of Warriston, and four ministers, Alexander Henderson and George Gillespie of Edinburgh, Samuel Rutherford of St. Andrew's, and Robert Baillie of Glasgow, were, on the 13th of September, 1643, admitted to seats and votes in the assembly by a warrant from the parliament as commissioners from the Church of Scotland. They had been deputed by the General Assembly, in which body, and to the Scottish Convocation of Estates, commissioners had been sent from the two houses of the English parliament, and also from the Assembly of Divines, soliciting a union in the circumstances in which they were placed. This negotiation between the supreme, civil, and ecclesiastical authorities of the two countries gave rise to the Solemn League and Covenant, which was drawn up by Henderson, moderator (or president) of the General Assembly, and having been adopted by a unanimous vote of that body on the 17th of August, was then forwarded to the English parliament and the Assembly of Divines at Westminster for their consideration.

The ordinance of the Lords and Commons by which the Assembly was constituted only authorized the members, until further order should be taken by the two houses, "to confer and treat among themselves of such matters and things touching and concerning the Liturgy, discipline, and government of the Church of England, or the vindicating and clearing of the doctrine of the same," &c. as should be "proposed to them by both or either of the said houses of parliament, and no other," and to deliver their opinions and advices to the said houses from time to time in such manner and

as by the said houses should be resolved. They were not empowered to settle anything. As the dissonances proceeded, a discordance of principles and views upon various points between the ruling Presbyterian party in Assembly and the growing Independent or Erastian majority in the parent became more evident; while the series of events also tended to separate two bodies more widely every day, at last to place them almost in opposition and hostility to each other. The assembly of Divines continued to sit at that name till the 22nd of February, 1649, having existed five years, months, and twenty-two days, during that time it had met 1163 times. The Irish commissioners had left above a year and a half before. Those of the others who remained in town were exchanged by an ordinance of the parliament into a committee for trying and punishing ministers, and continued to meet for this purpose every Friday morning till Cromwell's dissolution of the Long Parliament, 25th of March, 1653, after which they never met again.

If the important work of the Assembly was performed in the first three or four years of its existence. On the 12th of March, 1643, the parliament sent them an order directing that they should "thenceforth confer and treat among themselves of such a discipline and government as may be most agreeable to God's word, and most apt to procure and serve the peace of the church at home, nearer agreement with the Church of Scotland and other Reformed churches abroad, to be settled in this church in all and place of the present church government by archbishops, bishops, &c., that is resolved to be taken away; and nothing and concerning the directory of worship or Liturgy hereafter to be in the church." This order produced the Assembly's Directory for Public Worship, which was submitted to parliament on 30th of April, 1644; and their Confession of Faith, the first part of which was laid before parliament in the beginning of October, 1646, and the remainder on the 26th of November in the same

year. Their Shorter Catechism was presented to the House of Commons on the 5th of November, 1647; their Larger Catechism on the 15th of September, 1648. The other publications of the Assembly were only of temporary importance, such as admonitory addresses to the parliament and the nation, letters to foreign churches, and some controversial tracts. What are called their Annotations on the Bible did not proceed from the Assembly, but from several members of the Assembly and other clergymen nominated by a committee of parliament, to whom the business had been intrusted.

The Directory of Public Worship was approved of and ratified by the General Assembly of the Church of Scotland held at Edinburgh in February, 1645; the Confession of Faith, by that held in August, 1647; the Larger and Shorter Catechisms, by that held in July, 1648; and these formularies still continue to constitute the authorized standards of that establishment. The Directory of Public Worship was ratified by both houses of the English parliament on the 2nd of October, 1644; and also the doctrinal part of the Confession of Faith, with some slight verbal alterations, in March, 1648. On the 15th of October, 1647, the House of Commons passed an order that the Presbyterian form of church government should be tried for a year; but it was never conclusively established in England by legislative authority; and even what was done by the parliament in partial confirmation of the proposals of the Westminster Assembly of Divines, having been done without the royal assent, was all regarded as of no validity at the Restoration, upon which event episcopacy resumed its authority without any act being passed to that effect.

It is remarkable that there is not in existence, as far as is known, any complete account of the proceedings of the Westminster Assembly of Divines, either printed or in manuscript. The official record is commonly supposed to have perished in the fire of London. Three volumes of notes by Dr. Thomas Goodwin are preserved in Dr. Williams's Library, London; and two volumes by George Gillespie in the Advocates' Library, Edin-

burgh. Baillie's Letters, however, contain very full details of what was done during the period of his attendance; and a Journal kept by Lightfoot has also been printed. Much information is to be found scattered in various works, such as Reid's 'Memoirs of the Westminster Divines;' Orme's 'Life of Owen;' and especially Neal's 'History of the Puritans.' The only work that has appeared professing to be a 'History of the Westminster Assembly of Divines' is a 12mo. volume, of 390 pages, with that title, by the Rev. W. M. Hetherington, then minister of Torphichen, published at Edinburgh in the year 1843. The reader is referred for a further account of the sources of information on the subject to Mr. Hetherington's Preface, and to a note on p. 521 of Aiton's 'Life and Times of Alexander Henderson,' 8vo., Edinburgh, 1836.

WHIG. Different accounts are given of the origin of this word. Burnet, in his 'History of his Own Time' (i. 43), under the year 1648, says, "The south-west counties of Scotland have seldom corn enough to serve them round the year; and the northern parts producing more than they need, those in the west came in the summer to buy at Leith the stores that came from the north; and from a word *whiggam*, used in driving their horses, all that drove were called *whiggamors* and shorter the *whiggs*. Now, in that year, after the news came down of Duke Hamilton's defeat, the ministers animated their people to rise and march to Edinburgh; and they came up marching on the head of their parishes, with an unheard of fury, praying and preaching all the way as they came. The Marquis of Argyll and his party came and hearded them, they being about 6000. This was called the *whiggamors' inroad*; and ever after that all that opposed the court came in contempt to be called *whiggs*; and from Scotland the word was brought into England, where it is now one of our unhappy terms of distinction."

Whig has long been the name of the one of the two great political parties in the state; the other is Tory. [Tory.] The Whigs of the last century and a half are generally viewed as the representa-

tives of the friends of reform or change in the ancient constitution of the country, ever since the popular element became active in the legislature, whether they were called puritans, non-conformists, round-heads, covenanters, or by any other name. Down to the Revolution of 1688 the object of this reform party was to make such change; since that event at least till recently, it has principally been to maintain the change then made. Of course, however, this party, like all other parties, has both shifted or modified its professions, principles, and mode of action within certain limits from time to time, in conformity with the variation of circumstances, and has seldom been without several shades of opinion among the persons belonging to it in the same age. These differences have been sometimes, sometimes more distinctive; at one time referring to matters of apparently more temporary policy, as was thought to be the case when the Whigs of the last age, after the breaking out of the French revolution, split into two sections, which came to be known as the Old and the New Whigs; at another, seeming to involve so fundamental a discordance of views and objects, if not of first principles, as perhaps to make it expedient for one extreme of the party to lay the name of Whig altogether, and to call itself something else, as we have seen the Radicals do in our own day. All parties in politics indeed are liable to be thus drawn or forced to shift their ground from time to time; even that party whose general object is to resist change and to preserve what exists, although it has no doubt a more definite course marked out for it than the opposite party, must often, as Burke expresses it, vary its means to secure the unity of its end; besides, upon no principles will persons the same objects seem the most desirable or important at all times. But the innovating party, or party of the movement, is more especially subject to this change of views, aims, and character: it can properly speaking, have no fixed principles, as soon as it begins to assume or pursue such, it loses its true character and really passes into its opposite. Accordingly, a point of fact, much of what was

plein has now become Toryism or evasion, the changes in the constitution which were formerly sought for were attained; and, on the other as new objects have presented themselves, Whiggism has, in so far as it is its proper character, put on new, and even taken to itself new

FE; HUSBAND and WIFE. Of the legal incidents of the relation of husband and wife, or, as they are in our law books, *Baron and Feme*, (then already noticed: the mode of contracting the relation under Marriage, and of dissolving it, under Divorce; the provision for the wife out of husband's real estates, made by the common law and modified by statute, is different under Dower; and the right of husband to a life interest in his wife's estates of inheritance if he survives and has had by her a child capable of inheriting, under *Courtesy* or *Curtesy*; the provision which may be made for the husband, the wife, and the issue of the marriage belongs to the law of Settlement and Jointure; and the nature of the property which the wife owns independently of her husband belongs to the subjects of *Paraphernalia*, *Dowry*, and *Separate Property*. The

PARENT and CHILD shows the rights of both parents to the children of marriage.

Common law treats the wife (whom a *feme covert*, and her condition was) as subject to the husband, and enables him to exercise over her reasonable control; but the wife may obtain a writ that the husband shall keep her towards her, and also the husband may sue against the wife. The husband and wife are in some respects legally persons. Hence a wife cannot sue separately from her husband for injuries to her or her property, or be sued for debts, unless her husband shall be joined or been banished the realm; and where she is separated from him she may represent herself as a single person, or where, by particular customs, she is permitted to trade alone, as in London; but even here the husband may be joined as defendant by way of

conformity, though execution will issue against the wife alone. For injuries to the wife's person or property the remedy is by a joint action. They cannot contract with or sue one another; and contracts made between them and all debts contracted towards each other when single (except contracts made in consideration and contemplation of marriage) are made void by their union. This rule does not, however, apply to debts due from the husband to the wife in a representative character as administratrix or executrix. They cannot directly make grants one to another to take effect during the joint lives; nor can the wife, except in the exercise of a power, devise lands to her husband or to any other person unless (as it is said) by the custom of London and York; but the husband may devise or bequeath to his wife property to be enjoyed by her after his death. They cannot give evidence touching one another in civil matters, with this exception, that under the 6 Geo. IV. c. 16, s. 37, a bankrupt's wife may be examined touching the estate of her husband, and she is subject to the usual penalties if she suppresses or falsifies facts. In criminal prosecutions for injuries done by either party to the person of the other, the injured party may be a witness. With the person of his wife the husband takes the liability to her debts contracted before marriage; but those debts are only recoverable during the wife's life. If she dies before him, he is relieved from that responsibility, whatever fortune he may have had with her, except that he must apply to the discharge of such debts any assets which he acquires as his wife's administrator. As the wife is supposed to be under the perpetual control of her husband, she is free from responsibility for offences short of murder and treason committed at his instigation—the evidence of that instigation being his presence during the commission of the offence. For the same reason all deeds executed by her are void, unless by virtue of powers given to her or under the guarantee of certain solemnities the object of which is to ensure her free agency. A disposition by a woman of her property after the commencement of a *coverture* for

sequently an *act* of separation, unless it contains an immediate and certain provision for the wife, and no advertisement or other public notice will relieve a husband from the liability to provide his wife with necessities finding to her rank in life (the question of fitness being decided by a jury), or from the duty of paying the debts contracted for such necessities, if she has been driven from his house by his misconduct. On the other hand, a wife cannot recover at law from her husband from whom she lives apart any allowance which he has contracted with herself to pay her in consideration of the separation, if he declares that their union should be renewed. A *fact* of separation is not a sufficient answer to a suit promoted by either party for restitution of conjugal rights; nor is it an answer to the charge of adultery committed either before or after separation, for though "the ecclesiastical court does not look upon articles of separation with a favourable eye, yet they are not held so odious as to be considered a bar to adultery." (Haggard's Consistory Reports, i. 143.)

husband is not liable for the debt contracted after she has house without sufficient cause, given particular notice to the effect he will not pay her debt he is liable for debts contracted living in open adultery. If coon is obtained by the wife in the cruelty or adultery of the husband the spiritual court compels him to pay her (if her separate property enables her to live according to life) by requiring him to allowance proportionate to [Alimony.]

By the common law the quires all the personal property the wife has at the time of the marriage, and also all that accrues to the marriage. He also says chattels real or household in a settlement has not been made previously in consideration of those portions of her personal property which consist of securities for the same.

for possession his wife's property, the court will require him to make on her a settlement proportionate to the benefit which she derives. Usually one half of the fund is settled upon the wife and children, but the court takes all the circumstances into consideration; especially whether any settlement already exists; and it will not grant its aid to the wife who demands a settlement, if she is the born subject of a state which gives the whole property of the wife to the husband. The adultery of the wife deprives her of her equity (unless she has been a party of court married without the consent of the court); but her delinquency will not induce the court to vest the whole of her property in her husband, unless he does not maintain her. The court will secure the property for the benefit of the survivor and the children. On the other hand, in case of the cruelty of the husband, or his desertion of his wife, the court will award to her and her children not only the whole principal, but the interest of the property in question.

The husband is entitled during his life to the profits of his wife's freehold estates of which she is seized at the time of marriage or during the coverture. By the common law a husband might alien his wife's real estate by feoffment or fine, or lease it for her life or that of the tenant, and she was left to her remedy if she survived him, or her heir at law had his remedy if the husband survived; if they neglected that remedy, the alienation by the husband was good; but by the 22nd Henry VIII. c. 28, the wife or her heir may enter and defeat the husband's act. By that statute the lease of lands held by a man in right of his wife, or jointly with her, is good against husband and wife if executed by both; the lease may be for years or for life, but it must relate to land usually leased, it must not be by anticipation or in consideration of a fine; it must reserve a fair yearly rent to the husband and wife and heirs of the wife; and the husband is restricted from aliening or discharging the rent for a longer term than his own life. If however the wife receives rent after her husband's death upon any lease of her estate improperly granted by him, she confirms

that lease. A wife's copyhold estates are forfeited to the lord by any such acts of her husband as are ruinous to the estate (e.g. waste), as destroy the tenure (e.g. an attempt to convert it into a freehold), or otherwise deprive the lord of his rights, as a positive refusal to pay rent or perform service. But courts of equity will relieve the tenant when the forfeiture is not wilful or can be compensated. The enfranchisement of the wife's copyhold estate by the husband does not alter the mode of descent, but the estate will go to the wife's and not to the husband's heirs. Husband and wife to whom freehold or copyhold lands are given or devised take in entirety, and not as joint tenants; they are jointly seized, but neither can alien without the consent of the other, and the lands will belong to the survivor.

As to the wife's Dower, see that article.

The Statute of Distributions (22 & 23 Car. II. c. 10) gives to the widow of an intestate husband (if her claim has not been barred by settlement) one-third of his personal property when there is issue of the marriage living, and one-half when there is none. But the widow of a freeman of the city of London, or of an inhabitant of the ecclesiastical province of York (excepting the diocese of Chester), if the husband die intestate, leaving personal property more than sufficient to pay his debts and funeral expenses, is entitled to the furniture of her bedchamber and her apparel (*widow's chamber*), or to 50*l.* in lieu of it if her husband's personality is worth 200*l.*; then the personal estate is divided into three parts, whereof one-third goes to the widow, one to the children, and one (the *dead man's share*) to his administrator. Of this last share the widow is entitled under the Statute of Distributions, which regulates the division of it, to one-third if there is a child, and one-half if there is not. The benefit of this custom cannot be taken from the widow by any fraudulent device, such as a gift by the husband to a third party whilst he was at the point of death; or a gift with a reservation that it should only take effect after his death.

Marriage revokes powers of attorney

in such an event involves many intricate questions. The ecclesiastical courts consider all deeds of separation and all covenants in the nature of such deeds to be void. The courts of law, however, not only have supported such deeds against the husband, but have enforced a covenant made by him with his wife's trustees to pay her an annuity as a separate maintenance in the event of their future separation, with the approbation of the trustees. Whether such a covenant would now be supported by the courts of law is very doubtful. In order to render a deed of separation valid, it ought to be made by the husband and wife, with trustees for the wife, and any provision made in it by the husband ought to be for a valid consideration, such as a covenant on the part of the trustees to relieve the husband from the wife's debts or maintenance; the cruelty, or adultery, or desertion of the husband is a consideration, because the wife might have sued him in the ecclesiastical courts, and obtained alimony. But courts of equity will not interfere to enforce such deeds, though by a strange inconsistency they will enforce the husband's covenant for a separate maintenance if made through the intervention of trustees, and indeed in certain rare cases if made between the husband and

by the husband and some party, so divided that if there be a marriage a third, and if there be a half, goes to the nearest of his legatees of the deceased, whether husband or wife, the remainder property of the survivor. A continuance of the marriage husband's right, as administrator respects equivalent to the right prior; and whether the property has been acquired by him the wife, it is entirely at his disposal so far as that disposal is intended during his lifetime. If bequeathing it is limited by law of succession. [WILL.] If husband has the administration of property, he is responsible and extent of the goods in common personally, for the wife's whether contracted before or marriage. Action against a wife contracted before marriage at herself, but her husband is a administrator of the goods in common and while all "diligence" as for attaching property falls in common, he is liable to execution may proceed against him. In case of the divorced marriage before execution, the

cumstances will permit, so distributed as it would have been had no marriage between them been solemnized. In the case of a permanent marriage, the moveable property is divided as above stated, the survivor getting a half, if there is no issue, and a third if there is issue. Of any real property in which a wife dies infest, if there has been a living child born of the marriage, and if there is no surviving issue of the wife by a former marriage, the widower enjoys the life-rent use: this is called "the courtesy of Scotland." A widow enjoys the life-rent of one-third part of the lands over which her husband has died infest, by way of

Terce." The distribution of the property, personal or heritable, may be otherwise arranged by antenuptial contract, or equivalents to the property to which a party would succeed may be made by the settlements of the deceased.

On the dissolution of marriage by divorce [DIVORCE], the offending party forfeits whatever provisions, legal or conventional, he or she might be entitled to from the marriage: and the innocent party, at whose instance the suit of divorce is brought, retains whatever benefits, legal or conventional, he or she may have become entitled to by the marriage. It follows, that when the divorce proceeds at the suit of the wife, she obtains, at the date of the decree of divorce, the provisions which, as above, she would be entitled to on the death of her husband; and that, on the other hand, if the suit be at the instance of the husband, the wife not only loses her right to such provisions, but forfeits to the husband whatever property she may have brought into the goods in communion.

WILL AND TESTAMENT. Before the passing of the 32 Hen. VIII. c. 7, commonly called the Statute of Wills, and the 34 & 35 of Henry VIII. c. 5, there was no general testamentary power of freehold land in England, but the power of making a will of personal property, appears to have existed from the earliest period. Yet this power did not originally extend to the whole of a man's personal estate; but a man's goods, after paying his debts and funeral expenses, were divisible into three equal parts, one

of which went to his children, another to his wife, and the third was at his own disposal. If he had no wife or no children, he might bequeath one half, and if he had neither wife nor children, the whole was disposable by will (2 Bl. Comm. 492; Fitzherbert, *Nat. Brev.*, 125). The law however was gradually altered in other parts of England, and in the province of York, the principality of Wales, and in the city of London more lately by statute, so as to give a man the power of bequeathing the whole of his personal property. At present by the 1 Vict. c. 26, for the amendment of the law with respect to wills (whereby the former statutes there enumerated with respect to wills are repealed, except so far as the same acts or any of them respectively relate to any wills of estates *pur autre vie* to which this act does not extend), it is enacted that it shall be lawful for every person to devise, bequeath, and dispose of, by his will, executed as required by that act, all real and personal estate which he shall be entitled to either at law or in equity at the time of his death. Great alterations have been introduced into the law of wills by this statute; but as it does not extend to any will made before the 1st of January, 1838, it is necessary to consider the law as it stood previous to the act.

In general all persons are capable of disposing by will of both real and personal estate who have sufficient understanding. The power of the king to make a will is defined by the 39 & 40 Geo. III. c. 88, s. 10. By the former statute of wills, married women, persons within the age of twenty-one years, idiots and persons of nonsane memory, were declared incapable of making wills of real estate. These disabilities also applied to a bequest of personal estate, except that infants of a certain age, namely, males of fourteen and females of twelve might dispose, by will, of personalty; and that by the 12 Car. II. c. 21, s. 8, a father under twenty-one might by a will attested by two witnesses, appoint guardians to his children. But by the second section of the new Wills Act, no will made by any person under the age of twenty-one years is valid; and no

will made by any married woman is valid, except such a will as might have been made by a married woman before the passing of the new act. The disability of a married woman is not absolute. She may make a will of her personal property if her husband consents to that particular will, and it will be operative if he survive her. The validity of a lunatic's will depends upon the state of his mind at the time of making it. Persons born deaf and dumb are presumed to be incapable of making a will, but the presumption may be rebutted by evidence. Blindness and deafness alone do not produce incapacity. Devises of lands by aliens are at least voidable, the crown being entitled, after office found, to seize them in the hands of the devisee, as it might have done in those of the alien during his life.

Previously to the late act the general power of testators was subject to exceptions. Customary freeholds and copyholds were not within the Statute of Wills, and therefore, unless where devisable by special custom, could in general be passed only by means of a surrender to the use of a will. By the 55 Geo. III. c. 192, the want of a surrender was supplied in cases where it was a mere form, but the act did not apply to cases where there was no custom to surrender to the use of a will, nor to what are called customary freeholds. A devisee or surrenderer of copyholds could not devise before admittance, though an heir-at-law might. Conditions were not devisable, nor were rights of entry or action, nor contingent interests when the person to be entitled was not ascertained: lands acquired after the execution of the will also did not pass by it; but by section 3 of 1 Vict. c. 26, the power of disposition by will extends to all real and personal estate, and to all estates, interests, and rights to which the testator may be entitled at the time of his death, though acquired subsequently to the execution of his will. There is no restriction as to the persons to whom devises or bequests may be made except under the 34 & 35 Hen. VIII. c. 5, which forbids devises of lands to bodies politic and corporate. Exceptions to this statute have been introduced by

the 43 Geo. III. c. 107, and 43 Geo. III. c. 108, which authorize devises of lands to the governors of Queen Anne's Bounty, and for the erection or repair of churches or chapels, the enlargement of churchyards or of the residence or glebe for ministers of the Church of England. Alienage cannot be properly called an incapacity to take by devise, as the devised lands remain in the alien till office found, when they vest in the crown. By the 9 Geo. II. c. 36, no lands or personal estate to be laid out in the purchase of or charged on land can be given to any charitable use by way of devise. [MORTMAIN.] By the 40 Geo. III. c. 98, no disposition of property can be made by will or otherwise, so as to accumulate the income for a longer period than for twenty-one years after the death of the settlor, or during certain minorities [ACCUMULATION]; and by what is called the rule against perpetuities, no property can be settled by deed or will so as to be inalienable for more than a life or lives in being, and twenty-one years afterwards.

Before the 1 Vict. c. 26 wills of personal estate might even be nuncupative, that is to say, might be declared by the testator without writing before witnesses, provided they were made in conformity with the directions contained in the 19th section of the Statute of Frauds (29 Car. II. c. 3). A will of freehold lands of inheritance was required to be executed in the manner prescribed by the 5th section of the Statute of Frauds, which required it to be signed by the party devising, or by some other person in his presence and by his express direction, and to be attested and subscribed in the presence of the devisor by three or more credible witnesses. The term "credible," which gave rise to much discussion under the old law, is omitted in the new act, and it is enacted in the 14th section that no will is to be void on account of the incompetency of any attesting witness. By the 15th section gifts to attesting witnesses or their wives or husbands are declared void. This is an extension of the 25 Geo. II. c. 26, which related only to wills which at that time required the attestation of witnesses, that is to say, to wills of real estate. The words as to

wives or husbands are now. The signature of the testator was not required for the validity of a will of personality or of copyholds, whether the instrument was in his own hand-writing or in that of another. But by the 9th section of 1 Vict. c. 26, no will, whether of real or personal estate, is to be valid unless it be in writing, and signed at the foot or end by the testator or by some person in his presence and by his direction; and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses must attest and subscribe the will in the presence of the testator, but no particular form of attestation is necessary. Section 10 enacts that all appointments made by will are to be executed in the manner above prescribed, and are to be valid when so executed notwithstanding the nonobservance of any other ceremonies required by the power under which the appointment is made. By the 11th and 12th sections, it is declared that the act is not to affect the wills of soldiers on actual service or of mariners at sea, which are to remain subject to the particular provisions made respecting them by the 11 Geo. IV. and 1 Will. IV. c. 26. Questions formerly arose as to what was a publication of a will, but section 13 of 1 Vict. c. 26 enacts that no other publication shall be requisite than execution in the manner prescribed.

It is the rule in England, that a will of lands is regulated by the law of the country in which the lands are. The place where and the language in which such a will is written are unimportant; the locality of the lands is the only point to be considered. A will made in France and written in French, of lands in England, must contain expressions which when translated into English would properly designate the lands in question, and must be executed according to the forms required by the English law. Lands in England which belong to an English subject domiciled abroad and dying intestate, will descend according to the English law. With respect to personality, on the other hand, in cases both of testacy and intestacy, the law is different. If a

British subject becomes domiciled abroad, the law of his domicile at the time of his death is the rule which the English courts follow in determining the validity of his will and administering his personal property in England, and also in the case of a foreigner dying domiciled in England. Cases sometimes arise in which it is difficult to determine what was the domicile at the time of the death of the party, and consequently what law is to be followed in the distribution of his personal estate. If an Englishman domiciled abroad has real property in England, he ought, on account of the difference of the doctrine with respect to real and personal property, to make two wills, one duly executed according to the English law for devising his real estate, and another framed according to the law of his domicile for the disposal of his personal property.

A will is a revocable instrument. It was an established rule of law that the will of a *feme sole* was revoked by her marriage, but marriage alone was not considered a revocation of the will of a man; though marriage and the birth of a child, whom the will would disinherit conjointly were admitted by the law to have that effect, on the ground that those circumstances together produced such a change in the testator's situation, that it could not be presumed he would intend any previous disposition of his property to continue unchanged. By section 18 of the new act every will made by a man or woman is revoked by marriage, except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of appointment, pass to the testator's personal representative, or next of kin of the appointor. And by the 19th section no will is to be considered as revoked by any presumption of intention on the ground of an alteration in circumstances. By the 20th section no will or codicil is revocable except as above mentioned, or by another will or codicil executed in the manner required by the act, or by a writing declaring an intention to revoke, executed in the same manner, or by burning, tearing, or otherwise destroying the will by the testator himself, or by some other

his presence, and by his direct intent to revoke. By the 21st oblation, interlineation, or erasure made in any will after is to have any effect, except in he words or effect of the will; the alteration cannot be read the alteration be executed as a execution to be in the margin near to the alteration, or to a sum referring to the alteration, state of Frauds witnesses to a required to sign in the testator's act it was not necessary that he be in their presence, whereas by f that act a mere revocation in act have been signed by the presence of the witnesses, but not required to sign in his. This inconsistency is now resolved by the 21st section alters the law first of oblationers where the sign legible, and of cancellation of lines across the whole or any will. These acts will now be t unless properly executed and by the 23rd section no conveyer act made or done subsequent the execution of a will of real estate, except an act of revocation prevent the operation of the such estate or interest as the is power to dispose of at the death; and by the 24th section will is to be construed with to the real and personal estate in it, so as to take effect as if executed immediately before of the testator, unless a condition appear on the will.

tion of a will is in fact a re-
of it, being a repetition of the
required for its original va-
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by the re-execution thereof, or by a codicil executed in manner required by the act, and showing an intention to revive the same; and when any will or codicil which shall be partly and afterwards wholly revoked, shall be revived, the revival is not to extend to such parts as had been revoked before the revocation of the whole, unless a contrary intention appear. Under the old law, if a second will or codicil which revoked a former will was afterwards cancelled, the first, if it had been kept undestroyed, was held to be revived. It had previously been determined (4 Ves., 616) that a subsequent codicil, merely for a particular purpose and confirming the will in other respects, did not amount to a republication of parts of the will revoked by a former codicil. This section extends the doctrine to the case where a will had been first partially and afterwards wholly revoked.

Estates or interests in property created by way of executory devise or bequest, that is to say, such as are made expectant on the determination of prior estates in the same property, may be, like estates created by way of remainder in a deed, either vested or contingent. So far as depends upon the nature of the limitations themselves, the same rules are in general applicable to executory devises or bequests as to remainders; but testamentary instruments are not construed with the same strictness as deeds, and in determining the question of vesting or contingency, many considerations, depending on expressions in the will or other circumstances appearing upon the face of it, are admitted as affording presumptions of the intention of the testator. It is impossible here to give any enumeration of the numerous rules which have been laid down on this subject, and which are of course liable to be modified according to the circumstances of each particular case. It may however be observed generally that when a future gift is preceded by a gift of the immediate interest, it is to be presumed that the enjoyment only is postponed, and that the future gift is vested in interest; whereas when there is no gift of the immediate interest, the contrary presumption obtains; and upon that when the enjoyment of a gift is vest-

poned, not on account of circumstances personal to the object of the gift, but with a view to the circumstances of the estate, the gift is to be presumed vested. With respect to pecuniary legacies, some distinctions, borrowed from the civil law, are admitted which have no place as to real estate. One of these distinctions is that where futurity is annexed to the substance of the gift, the vesting is in the mean time suspended; but where the time of payment only is future, the legacy vests immediately. If however the only gift is contained in the direction to pay, this case is to be regarded as one in which time is annexed to the substance of the gift. When a future gift of a principal sum is coupled with a gift of the interest in the mean time, a strong presumption exists in favour of vesting. It is generally considered that a very clear expression of intention must exist in order to postpone the vesting of residuary bequests, on the ground that intestacy may often be the consequence of holding them to be contingent.

Great changes have been introduced in the law, as to the interpretation of wills by the above-mentioned 24th section of the act, which declares that wills are to be construed to speak as if they were executed immediately before the death of the testator, and the six following clauses. The 25th section enacts that, unless a contrary intention appear on the will, a residuary devise shall include all estates comprised in lapsed and void devises. This alters the former law, whereby such estates devolved on the heir. The 26th clause enacts that a general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands, unless a contrary intention appear. This also effects a considerable alteration in the law of devises. Formerly neither copyholds (unless surrendered to the use of the will) nor leaseholds would pass by a general devise of lands or other general words descriptive of real estate, unless the testator had no freehold lands on which the devise might operate. Since the statute of the 55 Geo. III. c. 192, which dispenses with the necessity of surrenders in certain cases, copyholds stood upon nearly the same footing as freeholds, in respect to

a general devise; but leaseholds still continued subject to the old rule of law. By the 27th section, unless a contrary intention appear, a general devise of real estate and a general bequest of personal estate are respectively to include estates and property over which the testator has a general power of appointment. It was never considered necessary in the execution of a power of appointing real estate, whether general or special, to refer expressly to the power. It was sufficient the intention to exercise it appeared from a description of the property in the will or by other means. If the testator had no other lands which answered the description, a general devise would have been a good execution of the power; but it was otherwise if he had any other lands which would satisfy the terms of the devise. The enactment applies only when the testator has a general power of appointment. Where the power is limited or special, it seems that the old rule of construction will still hold. As to personal property the rule was, that there must be some reference to the power, on the somewhat unsatisfactory ground that as any person must be supposed possessed of some personality, there was enough to make a general bequest operative without reference to the property comprised in the power. With respect to devises, it seems that the old rule must still prevail where the power is special or limited. By the 28th section a devise of real estate without words of limitation is, unless a contrary intention appear by the will, to be construed to pass the fee. This clause introduces a very considerable alteration of the old law, under which, in accordance with the doctrine that the heir was not to be disinherited by implication, it was held that a devise of lands without words of limitation conferred on the devisee an estate for life only, notwithstanding the appearance of a contrary intention in other parts of the will. The 29th section enacts, that in any devise or bequest of real or personal estate the words "die without issue," "die without leaving issue," or "have no issue," or any other words of the like import, shall be construed to mean a want or failure of issue

time of the death, and not an in-
the failure of issue, unless a contrary
tion appear; except in cases where
words mean, if no issue described
preceding gift shall be born, or if
shall be no issue who shall live to
the age or otherwise answer the
option required for obtaining a vested
by a preceding gift to such issue.
or the old law, when a testator gave
estate to A and his heirs, and directed
if A died without issue it should go
though his meaning in most cases
that it should have it unless A had
living at the time of his death, the
"issue" was held to comprise de-
scendants of every degree existing at any
time of time, and the consequence
that where the subject of the devise
real estate, A took an estate tail and
ced the absolute dominion over the
ery, and where it was personality
terior disposition to B was void for
reasons.

The 30th section every devise of
estate (not being a right of presen-
tation to a church) to a trustee or ex-
ecutor is to be construed to pass a fee
simple, unless where a definite term of
years or an estate of freehold less than
a fee simple is expressly given to him.

By the 31st section trustees under
a limited devise to them, when the
trust may endure beyond the life of a
person beneficially entitled for life, are
to take a fee. When the limitation in
the will was made to a trustee by way of
trust, the legal estate by the opera-
tion of the statute of uses, without
reference to the nature of the trust. But
in other cases the question was deter-
mined by the intention of the testator,
ascertained from the nature of the trust;
the trustee was considered to take

that quantity of estate which the
purposes of the trust required. Such
mode of construction was obviously of

difficult operation, and it was often
easy to determine in whom the fee
was vested at any given period, and
before who were the proper parties to
deal with the property and to join in a
conveyance of it. The enactments contained
in the two last-mentioned sections will in a
great measure remedy this inconvenience.

22. 11.

It follows from the nature of wills that
the devisees and legatees contained in
them are liable to failure from the death
of the devisee or legatee before the tes-
tator. This is called the doctrine of
lapse. It applies equally to devises of
real estate and to bequests of personality.
It is a general rule that words of limi-
tation to heirs or executors superadded
to a gift have no effect in preventing
lapse in case of the devisee or legatee
dying before the testator, for they are
considered not as words of gift, but
merely as indicating the legal devolution
of the property. When the gift is to
several persons as joint tenants, unless
all the objects die before the testator,
there can be no lapse; for as joint tenants
are each takers of the whole, any one
existing at the death of the testator will
be entitled to the whole. The same is
the case where the gift is to a class, unless
where the individuals of the class were
ascertained before the lapse. Two changes
have been introduced into the law of
lapse by the new act. The 32nd section
enacts that devises of estates tail shall
not lapse, but that where the devise in
tail dies during the life-time of the tes-
tator, leaving issue, the devise shall take
effect as if he had died immediately after
the testator, unless a contrary intention
appear by the will; and, by the 33rd
section, gifts to children or other issue
who shall die before the testator, having
issue living at the testator's death are not
to lapse, but, if no contrary intention
appear by the will, are to take effect as
if the persons had died immediately after
the testator. As a will of personality
operated upon all the property of that
kind belonging to the testator at the time
of his decease, there could obviously be
no intestacy with regard to any part of
the personal estate while there was a
valid residuary bequest. The same will
now be true of wills of real estate in
which there is a valid residuary devise,
so that there will no longer be room for
many of the questions that arose as to
whether the residuary devise took be-
neficially or as a trustee, and as to the
devolution of real estate directed to be
sold.

If an ambiguity exists on the face of
a will

WILL, ROMAN. A Roman will was called Testamentum. Testamentum was defined by the jurists of the Imperial period to be "a legal mode of a man's declaring his intention in due form, to take effect after his death." The person who made such declaration was called Testator.

The power of making a Roman testament only belonged to Roman citizens who were sui juris, a rule which excluded a great number of persons: those who were in the power of another, as sons not emancipated, and daughters; impuberes; dumb persons, deaf persons, insane persons, and others; and, as a general rule, all women. The circumstances under which a woman could make a will were peculiar; and they would require a very particular statement. A male of the age of fourteen years complete, unless under some special incapacity, could make a valid will. A female, so far as respected age only, acquired this capacity on the completion of her twelfth year.

Originally Roman citizens made their wills at Calata Comitia, which were held twice a year for this purpose. It is not said that these wills were made in writing; and it is here assumed that they were made at the Calata Comitia only for the purpose of securing the proper evidence

must transfer of the property for the lifetime of the owner to a person who undertook to dispose of it as he saw fit. As it was a substitute for the formal will made at the Calata Comitia, it is probable inference that it only substituted the testament made at the Calata Comitia, without wanting that publicity. The forms of testamentary disposition in Gaius, fell into disuse, and the *testamentum per scripsum* became the common form. Originally the formal purchase of the testator's estate (familia) emptied the place of the heres at a will. When Gaius wrote, and long time, the old form of testamentary disposition was retained as to the testator, but a heres was appointed by will to carry into effect the testator's intention. The formal purchase of the testator's estate was retained out of regard to antiquity and the institution of a heres was necessary to the validity of a will.

The form of testamentary disposition *per scripsum* is described by Gaius (104). As in other acts of law, so in this, there were five witnesses, and the testator was of full legal age (puberes). The witnesses are considered by the jurists to be the representatives of the five classes of the Roman people, that as the original act of

was written on tablets of wood or wax; and the word "cera" (wax) is often taken as equivalent to *tabula*. A Roman will was required to be in the Latin language until A.D. 459; when it was enacted that wills might be written in Greek. A man will in the later periods was sealed and signed by the witnesses. The rite consisted in making a mark with wax or something else on the wax, and names were added. The seals and wax were on the outside, for according to the old law there was no occasion for witnesses to know the contents of the will. The old practice was for the testator to show the will to the witnesses, and to ask them to witness that what he so wanted to them was his will. It was unusual for a man to make several copies of his will, and to deposit them in safe keeping. (Dig. 51, tit. 1, s. 1, and the case of a legacy put to Proculus.) Augustus, the emperor, made copies of his will (Sueton., *Aug.* 101); also his successor Tiberius (Sueton., *Tib.* 76). The Vestal Virgins were often keepers of wills, or they were deposited in a temple or with a friend. (Tacit., *l. i. s.*) At the opening of the will witnesses or the greater part, if alive on the spot, were present, and after acknowledging their signatures the will was opened.

It has been mentioned that in order to make a Roman will valid, it must appoint an heir. The heir was a man who represented the testator, and he paid the legacies which were left by will. He stood in the place of the testator, or of the purchaser of property in the old form of will. A man might be appointed in such words as follow: "Titius heres esto," "let Titius be my heir," or "Titium heredem habeo," "I will Titius to be my heir." Generally all Roman citizens could make a will could be heirs; persons could be heirs who could make a will—slaves, for instance, others who were not *sui juris*.

And in the case of wills and other documents was punished by severe penalties under a *Lex Cornelia*.

The development of the Edictal or Praetorian law at Rome introduced a less

formal kind of will. If there were seven proper witnesses and seven seals, and if the testator had the power of disposition both at the time of making his will and at the time of his death, the edict dispensed with the ceremony of mancipation and gave to the heirs or heredes the *bonorum possessio*. This mode of testamentary disposition existed under the Republic, and accordingly a man could either make his will by the civil form of mancipation, or he might make it after the praetorian form with seven seals and seven witnesses, without any mancipation. The form of testamentary disposition by mancipation was ultimately superseded by the more convenient praetorian form. The legislation of Justinian required seven male witnesses of proper age and due legal capacity; and it was sufficient if the testator declared his will orally before these witnesses.

A Roman will, as already observed, was valid if the testator had a disposing power at the time of making his will and at the time of his death. It follows that his will, though made at any time before his death, was sufficient to dispose of all the property that he had at the time of his death. This rule of law is now established in the case of an English will by the recent act (1 Viet. c. 26) as to real property; it always applied in the case of an English will to personal property. But an English will is valid if the testator subsequently loses his disposing power, as for instance if he become insane. A Roman will was not valid under such circumstances; and it also became invalid in other cases.

In order to render a Roman will valid, it was necessary that the heredes *sui* of a man (his sons and daughters were in the class of heredes *sui*) should either be appointed heredes or should be expressly excluded from the inheritance. A will which was illegal at the time of being made was testamentum *injustum*, that is, "non jure factum," not made in due legal form. A will which was *justum* might become invalid; it might become *ruptum* (broken) or *irritum* (ineffectual).

A second will duly (jure) made rendered a former will invalid (*ruptum*), and it was immaterial whether the second

will took effect or not. If it was duly made, it rendered a former will of no effect, and if the second will did not take effect, the testator died intestate.

If a testator sustained a *capitis diminutio* after making his will, that is, if he lost any part of his status of a Roman citizen which was essential to give him a full testamentary power, the will became *Irritum*, ineffectual. A prior will might become *Ruptum* by the making of a subsequent will; and such subsequent will might become *Irritum* in various ways; for instance, if there was no heres to take under the second will.

Though a will became *Ruptum* or *Irritum*, and consequently lost all its effect by the *Jus Civile*, it might not be entirely without effect. The *bonorum possessio* might be granted by the *Prætorian edict*, if the will was attested by seven witnesses, and if the testator had a disposing power, though the proper forms required by the *Jus Civile* had not been observed.

The rule of Roman law which required heredes *sui* to be expressly exheredated applied to posthumous children. The word *Postumus* (from which our word posthumous has come) simply signified "last;" and a child born after the date of his father's will was *Postumus*. If he was born after the father's death he would also be born after the date of his father's will and consequently would be *Postumus*. If a *suius heres* was born after the making of the will, and was not recognised as heres or exheredated in due form, the will became *Ruptum*. This rule of law was thus expressed: "*adgnascendo rumpitur testamentum*." There were also cases in which a will might become *Ruptum* by a quasi-adgnatio.

A testament was called *Inofficiosum* when it was made in due legal form, but not "*ex officio pietatis*." Thus when a man did not give the hereditas or a portion of it to his own children or to others who were near of kin to him, and when there was no sufficient reason for passing them by, the persons so injured might have an action called *Inofficiosi Querela*. The persons who could maintain this action were particularly defined by the legislation of Justinian. If the *Testamentum* was declared by the competent

authorities to be *Inofficiosum*, it was rescinded to the amount of one-fourth of the hereditas, which was distributed among the claimants.

The ground of the *Inofficiosi Querela* is explained by Savigny (*System des heutigen Röm. Rechts*, ii. 127, &c.). When the testator in his will passed by persons who were his nearest kin, it was presumed that such persons had merited the testator's disapprobation. If this was not so, it was considered that the testator had by his will done them a wrong, and the object of the action was to get redress by setting the will aside. The main object, however, was the establishment of the complainant's character, to which the obtaining of part of the testator's property was a subsidiary means. The expression *Testamentum Inofficiosum* occurs in Cicero and in Quintilian; but it is not known when the *Inofficiosi Querela* was introduced.

A Roman codicil (*Codicilli*, for the word is not used in the singular number till a late period under the Empire) was a testamentary disposition, but it had not the full effect of a will. A heres could not be appointed or exheredated by *codicilli*; but *codicilli* were effectual so far as to bind a heres, already appointed by a will, to transfer a part or the whole of the hereditas to another. *Codicilli* were in fact useless unless there was a will prior or subsequent, which confirmed them either retrospectively or prospectively. (Gaius, ii. 270; *Dig.* 29, tit. 1, s. 8; Pliny, *Ep.* ii. 16, which has been sometimes misunderstood.)

Codicilli were originally informal writings; it was only necessary to prove that they were by the testator. The later legislation required *codicilli* which were in writing to have five witnesses who subscribed their names to the *codicilli*.

The subject of Roman wills is of great extent, and it involves questions of considerable difficulty. The principal authorities have been mentioned in this article, to which may be added *Ulpian's Fragmenta*, tit. 20; *Dig.* 28, tit. 1, s. 1, &c.; *Cod.* 6, tit. 23; *Das Testament des Domitianus*, *Zeitschrift f. Gesch. d. Rechtsw.*, article by Rindorf on a frag-

tary inscription which contains a man's will. The date of the will is C. 862 or A.D. 109, in the twelfth year of Trajan.

WILL. (Scotland.) The right of bequest in Scotland is confined to moveable personal property. It does not extend to heritable or real property—which comprehends lands and tenements, fixtures, and appurtenances of a family mansion (such as the pictures, plate, and library) which are called "heirship moveables,"

machinery in mines and manufactures, the stock on farms, and every description of security or other right in any of these kinds of property.

Testaments may be made of heritable property in the manner which will be described below, but it is a principle of the greatest importance, and one the effect of which is often productive of the most serious consequences, that no settlement can be made in the form of a will. All persons of sound mind

after the age of puberty (14 in males, 12 in females) may execute wills; and persons under guardianship, as wives and minors who have curators may do so without the consent of their guardians.

Very lately the will of a bastard is held ineffectual, and the moveable goods of such a person, lapsing to the crown on death, were distributed by a gift in reversion; but this peculiarity has been abolished by 6 & 7 Wm. IV. c. 22. A verbal or "nuncupative" will, if uttered in the presence of two witnesses who bear testimony to it, is valid to the extent of

one hundred pounds Scots, or *£l. 6s. 8d.* (the value of the bequest should exceed that sum, the legatee may recover the extent of the hundred pounds only).

A will, sufficiently formal in all its parts to prove its terms and its date, may be executed in the following manner.—The grantor's usual signature must be written at the end, and, if there be more than one sheet, on each sheet: the usual practice is to sign each page. Any inter-

ruption in the margin must have the corrected name or the initial letter of it written in, and the surname or its initial letter below. He must either sign in the presence of, or show and acknowledge to, two witnesses, who

must be males, above fourteen years old. The witnesses sign the deed at the end, each putting after his name the word "witness." The will must terminate with "a testing clause," setting forth that the grantor has signed the deed in presence of the witnesses, who are named and so designed as to be distinguishable from other persons, at a certain place on a certain day. The testing clause must contain the name and description of the writer of the deed, the number of pages it consists of, the number of words written in erasure or interlined, and the number of marginal notes. There are some of these formalities of which the absence is fatal to the deed—others in which it will throw the onus probandi on the holder.

Where the will is holograph, or written by the grantor himself, it does not require to be attested; but if it be not attested, it in the first place does not prove itself to be holograph, and the statement that it is in the handwriting of the grantor must be proved by extraneous evidence to be true; and, secondly, it does not prove its own date; and if there be any other competing title, it will be presumed to have been granted at such a time as will give that title the preference. If the party cannot write, he can execute a will through a notary, who receives authority in presence of two subscribing witnesses to sign for the testator, and describes the transaction in his notarial docquet. A clergyman of the Established Church of Scotland may act as a notary for the signing of a will. It is usual to nominate an executor of the will, but it is not essential to do so; and if there be no one named, an executor is supplied by operation of law. Wills executed by persons domiciled out of Scotland, if they be according to the form which would carry such property in the place where they were executed, will be effectual to convey moveable property in Scotland; but no will, whatever be the law of the place where it is made, can dispose of heritable property in Scotland. The last dated will is the effectual one, and all others are considered as revoked by it in so far as they are inconsistent with it.

The peculiar feature of the law of Scotland out of which arises the circumstance

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The peculiar feature of the law of Scotland out of which arises the circumstance

that heritable or real property cannot be bequeathed is, that no deed conveying such property is effectual unless it be expressed in what are called "dispositive terms," or terms making over the property at the moment of the signing of the deed. Thus the terms "I grant, convey, and make over," are sufficient to carry heritable; but the terms "I leave and bequeath" are not. The peculiarity arose during the time when the holder of a fief could not part with it to another person unless that person were accepted as a vassal by the feudal superior. A conveyance not intended to take effect until after the cedent's death did not admit of the superior's using his privilege, and the method of creating a settlement of landed property was constructed on the forms by which the feudal usages were gradually adapted to the conveyance of land from a seller to a purchaser. A deed of settlement relating to landed property must thus be essentially a conveyance *de presenti*, but to accomplish the purposes of a virtual bequest, the following methods have been adopted by conveyancers:—1, the grantor may convey to himself, with a "substitution" or remainder to his destined successor; 2, he may grant a direct conveyance, reserving to himself the life-rent; 3, he may grant such a conveyance, reserving power to alter. It is of the nature of a conveyance of land that to be effectual, delivery of the deed to the assignee, or an equivalent, must have taken place, and thus a settlement of land to be effectual after the grantor's death must have been delivered to the person favoured by it, or some one for his behoof, or must have been entered in a public register, or must contain a clause dispensing with delivery. The formalities above mentioned as necessary to the execution within Scotland of wills carrying moveables are necessary to settlements conveying heritable property in Scotland, but with this difference, that in the settlement of heritable property, if the party cannot write, the deed must be executed by two notaries before four witnesses; and in this case a clergyman cannot act as notary. To be an effectual deed, a settlement of landed property must also contain authority for

completing the feudal title to the property, and this authority will vary with the nature of the holding. When however there is an effectually attested deed, containing in clear terms a conveyance *de presenti*, although the formalities necessary for completing the feudal investiture be omitted, and it be thus insufficient of itself to carry the estate, it may give a right of action to compel the heir-at-law to make it over. If the heir-at-law found upon the deed, he is by that act bound to make good its provisions in favour of all other persons. Thus, if the deed be in the form of a bequest, and in itself incapable of carrying heritable, if it convey moveable property to the heir which he would not have otherwise succeeded to, he is bound, if he take advantage of it, to fulfil its destination of the heritage. No settlement of heritable property to the prejudice of the heir-at-law can be validly granted on a death-bed. Three elements are necessary to constitute the legal exception of death-bed: 1st, that the grantor was ill of the disease of which he died when he granted the deed; 2nd, that he died within sixty days after executing it; and, 3rd, that he did not go to church, or to a market, unsupported, during the sixty days. The act 7 Wm. IV. & 1 Vict. c. 26, and the other enactments relating to wills in England, do not apply to Scotland.

WINE AND SPIRIT TRADE. The consumption of wine and spirits in the United Kingdom amounts in round numbers to about 28 million gallons, the duty on which, about 9,000,000*l.*, is equal to above one-sixth of the whole revenue. The average consumption of wine of all kinds is about 6 million gallons, though in some years it has fallen much below this quantity. Of foreign and colonial spirits the annual consumption is about 3½ million gallons; and of British spirits about 20 million gallons, though in 1842 it fell below this quantity from various causes. The stock of wine in bond is usually equal to two years' consumption: in January, 1843, the quantity under bond in the port of London was 7,004,347 gallons, and there were 4,440,246 gallons at the outports. At the same date there were 6,931,205 gallons of foreign and

colonial spirits in bond, of which 3,589,672 gallons were in London, and 2,491,533 at the outports.

The rate of duty on wines and spirits has had great influence on the consumption. In 1700 the average consumption of wine in England was nearly one gallon per head, whereas it is now less than a fourth of a gallon. Prior to the Methuen Treaty the wines consumed in this country were almost entirely the produce of France, but although the duty on French wines was equalised in 1831, the annual consumption only amounts to one gallon amongst sixty people. In France the consumption of wine is 19 gallons per head; and in Holland, with moderate duties, the consumption of French wine is one gallon per head. Mr. Porter states in his 'Progress of the Nation,' that there are wines produced in France better adapted to the English taste than the French wines usually drunk here, and that they could be imported at sixpence a bottle without duty. If, as he remarks, wines of fair quality and flavour could be sold by retail at one shilling the bottle, the consumption would no doubt be very large; but the duty alone is at present not less than a shilling a bottle, and the consequence is that the consumption of French wines is chiefly confined to those of the first class. But beer is the common drink in England, and it would pro-

bably continue to be so, if wines were as cheap in England as in France. The present duty on all foreign wines is 5s. 6d. the gallon; the duty on Cape wines is 2s. 9d. the gallon. The number of gallons of foreign wines retained for home consumption in the year ending January 5, 1845, was 6,838,684, of which 2,887,501 were Portugal wines, 2,478,360 were Spanish wines, and 473,789 were French wines; the rest were Cape, Sicilian, and other sorts. As another illustration of the effect of high duties in checking consumption, it may be stated that the duty of 22s. 10d. on foreign spirits was less productive than the duty of 11s. 1d. in 1801; though if the rate of consumption had followed the increase of population, the duty would have been 2,465,767l. more than the amount actually received. The present rates of duty on British spirits are from 500 to 600 per cent.; on Irish and Scotch corn spirits (whisky) about 200 per cent.; and on Irish and Scotch malt spirits (whisky) 300 per cent. and upwards. By the last Tariff (1846) the duty on foreign spirits is reduced to 15s. the gallon; the duties on colonial spirits, on home-made spirits, and on foreign wines were not altered by it. The number of gallons, including overproof, of foreign and colonial spirits, of all sorts, retained for home consumption, was—

Year.	England.	Scotland.	Ireland.	United Kingdom.
1842 . . .	3,099,542	71,927	29,546	3,201,015
1843 . . .	3,061,699	71,820	28,438	3,161,957
1844 . . .	3,134,350	78,142	30,114	3,242,606
1845 . . .	3,431,614	84,478	33,797	3,549,889

In the year ending January 5, 1845, the quantities of foreign and colonial spirits retained for home consumption were—

	Gallons.
Rum	2,198,592
Brandy . . .	1,623,073
Geneva . . .	14,564
Other sorts . .	6,077
	<hr/> 3,242,606

For many years the number of distillers in England has not exceeded twelve. In 1835 six distillers in London and the

vicinity paid 1,080,202l. duty out of 1,420,525l., the total amount of duty paid by distillers in England. The number of distillers in Scotland in the above year was 260, and there were 87 in Ireland; but the number of rectifiers in England, Scotland, and Ireland is a proof of the different tastes of the people in each country. In England, in 1835, there were 108 rectifiers, in Scotland 11, and in Ireland 19. Very little brandy or rum is consumed either in Scotland or Ireland, the pure home spirit without any artificial flavouring being preferred. Nearly the whole of the spirit distilled

in England passes through the hands of the rectifier, who, by the addition of various ingredients, produces the compound called gin; and above 500,000 gallons of English spirit are flavoured in imitation of French brandy.

Malt and unmalted grain together are used in the English distilleries; six-sevenths of the Scotch spirits are made from malt, and the remainder from malt and unmalted grain; in Ireland about a tenth is from malt, and, with the exception of a few hundred gallons from potatoes, the remainder is from malt and unmalted grain. Of the British spirits consumed

in 1845 the number of gallons made from malt only was 6,668,759, the remainder (16,453,829) having been made from mixture of malt with unmalted grain. The number of gallons made from malt only was 5,368,697 in Scotland; 377,000 in England; and 582,579 in Ireland. The duty was 7s. 10d. per gallon on English spirit, 3s. 8d. on Scotch spirit, and 2s. 8d. on Irish spirit.

The number of persons engaged in the various trades of distilling, compounding and retailing spirits, in 1840, was as follows:—

	England.	Scotland.	Ireland.
Distillers and rectifiers . . .	105	215	112
Dealers not retailers	2,922	452	364
Retailers—premises rated			
Under 10l.	15,431	10,364	11,054
10l. and under 20l.	19,692	4,112	3,078
20 " 25 "	3,303	321	287
25 " 30 "	2,199	178	189
30 " 40 "	3,684	207	271
40 " 50 "	2,349	85	148
50 and upwards	6,022	246	296

The dealers in foreign wine in the same year were as follows:—

	England.	Scotland.	Ireland.
Not being dealers in spirits or beer	1,793	28	173
Dealers in beer but not in spirits	44	31	252
Dealers in wine, spirits, and beer	22,113	2,800	1,964

England, Scotland, Ireland.
Passage vessels with retail licences 254 93 35

The following table, showing the consumption of British spirits in different years during the present century, is abridged from vol. iii. of Porter's *Progress of the Nation*:—

	England, galls.	Scotland, galls.	Ireland, galls.	United Kingdom, galls.
1802	3,464,380	1,158,558	4,715,098	9,338,036
1812	3,522,970	581,524	4,099,301	8,213,795
1821	4,125,616	2,385,495	3,311,462	9,822,573
1831	7,434,047	5,700,689	8,710,672	21,845,408
1838	7,338,490	6,259,711	12,296,342	26,486,543
1841	8,166,985	5,989,905	6,485,443	20,642,333
1842	7,956,054	5,595,186	5,290,650	18,841,890
1843	7,724,051	5,593,798	5,546,483	18,864,332
1844	8,234,440	5,922,948	6,451,137	20,608,525
1845	9,076,381	6,441,011	7,605,196	23,122,588

In 1841 the consumption of British spirits was at the rate of 0.51 gallons per head in England, 2.28 gallons in Scotland, and 0.80 gallons in Ireland. Before the commencement of the temper-

ance movement in Ireland, the rate of consumption in that country was 0.4 gallons per head. The quantity of spirit charged with duty in Ireland fell from 12,296,342 gallons, in 1838, to 5,290,650

1841, the only change of duty being addition of 2 per cent. The further diminished consumption in 1842-3 is fully apparent, as the increase of duty on 2s. 8d. to 3s. 8d. a gallon led to still distillation. By this addition of a shilling a gallon duty, the minister anticipated an increased revenue of 250,000*l.*; instead of which, in the year ending 5th oct. 1843, there was a positive decrease 7361*l.*, the quantity of spirits brought charge having fallen to 4,813,045 gallons, or 1,715,901 gallons less than in the previous year. On the 5th of April, 41, the number of persons in gaol for still distillation was 48; on the same day in 1843 the number was 368. The ancient mistake was so obvious that, in session of 1843, an act was passed (5 & 7 Viet. c. 49) for returning to the scale of duty.

The duty on rum from British colonies is 3s. 4d. the gallon. The consumption of rum has been declining for many years in England, and is insignificant in Scotland and Ireland. With the same duty in each country the distribution per head to the revenue, in 1811, was 1s. 3*d.* in England, 2*d.* in Scotland, and 0*d.* in Ireland. In 1831, it was nearly the same duty as in 1841 (instead of 3s. 4*d.*), it was 2s. 3*d.* in England, 5*d.* in Scotland, and 1*d.* in Ireland. The same rate of duty on sign spirits, in 1841 yielded 1s. 7*d.* per head in England, 5*d.* in Scotland, and 0*d.* in Ireland. The quantity of descriptions of wine consumed in the United Kingdom was less in 1841 than 1801. In 1840, out of 100 gallons, there were consumed—of Portugal wines, 7 gallons; Spanish, 46*g.*; Madeira, 1*g.*; Tenerife, 6*g.*; Sicilian, 8*g.*; Cape, 1*g.*; French, 7*g.*; Rhenish, 1*g.*. The consumption of the wines of Portugal is 75 per cent. of the total quantity of a century ago.

Porter's *Progress of the Nation*, vol. 1: *Report of Commissioners of Excise on the Consumption of British Spirits*; *Parliamentary Papers*.

WITNESS. [EVIDENCE.]

WOMAN. The political and social condition of men varies greatly in different countries. The condition of

women also varies greatly, though the variations in the condition of women are not universally determined by the social or political condition of the men.

It is sometimes said that the condition of women is a kind of index to the degree of civilization in any given nation. The word civilization is somewhat indefinite, but perhaps we may understand the proposition thus: in those countries in which the social and political conditions of men nearly approach one another, the social position of the women will also be nearly the same. Thus in Great Britain and the United States of North America the social and political condition of men and the social condition of women are nearly the same. The differences are not worth noticing here.

The difference of sex satisfactorily explains the subordinate condition which women occupy in a political system. Their average strength is below that of the male, and those who become mothers have all the burden of the child before it is born and the chief labour of nurturing the child after it is born. The conformation of their body and its general more delicate organization disqualify them for many of the labours of the male sex, but qualify them for other labours of a different kind.

Among some nations the wife is the servant of the husband, and is compelled to do many things which the male could do better. This happens among some savage nations, and is justly considered a proof of barbarism; for it implies an abuse of power on the part of the male and a miscalculation of his own interest. Woman is adapted to be a solace to man when he is wearied, a help to him in his labours, and a companion in his moments of relaxation. She increases his happiness by co-operating with him in such ways as her strength and the peculiarities of her sex allow, not by labouring as he does or can do. The condition of women in nations called civilized approaches the condition of women in some nations called uncivilized, when they join in the labours of the man instead of performing the offices which are peculiarly suited to the female.

The exclusion of women from political

power, from the discharge of public functions, and from many other things that can only be done by mingling with men out of doors, is nearly universal, and it is founded on sufficient reasons. The difference of sex is the cause, and the necessary cause, of this almost universal practice. In some nations the principle of hereditary succession allows a female to take in course of descent the regal power and title: in some nations females are excluded. In a constitutional government where the administration is conducted by responsible agents of her who has the regal power and title, there seems no reason why a female should not exercise the kingly office as well as a male. In a monarchy properly so called, where the monarch is absolute, the administration of a woman is perhaps more likely to be bad than that of a male; though the reasons for excluding women from a participation in political power generally do not apply in their full extent to exclude a woman from exercising sovereign power.

Married women and unmarried women are not in the same condition in any country. The married woman by consenting to live with a man subjects herself to a control which is very different from that of a father or guardian. The purposes of marriage are among others the union of the sexes, the consequence of which is the procreation of children. The husband claims the exclusive possession of his wife's person, and obedience to his reasonable commands, which in general his superior strength enables him to enforce. It is the condition of married women in different countries which is comprehended under the term "condition of women" rather than that of unmarried women; and their condition comprehends the power of the husband over their person, over the children of the marriage, and over the property which the wife has at the time of marriage or may acquire during the marriage. In all these matters the positive law of different nations varies very much.

But it would be a great mistake if we were to judge of the condition of women in any country simply by viewing the positive rules of law as evidence of their

condition. There are many things in the relation of husband and wife, parent and child, for which no positive law has ever attempted to provide: these matters are governed by the positive morality, that is, by the usages and habits of any given society. It would not follow that if positive law gave women more power, they would also receive more respect and tender consideration from the stronger sex. On the contrary, if the two sexes were placed on the same footing by positive law, so far as it could be done, this would contradict the constitution of nature as indicated by the difference of sex, and would rather tend to deprive the female of the respect and consideration which she receives in most countries. There is some mean between the absolute subjection of the wife to the husband and the perfect equality by law, which appears to be most in harmony with the physical differences of sex, and best adapted to maintain a system of positive morality that shall conduce to the happiness of both.

As to unmarried women, so long as they are under parental authority, there are reasons in the relation of parent and child for maintaining the power of the parent by positive law to a certain extent; and positive morality supplies what law leaves defective. As women who are unmarried expect to marry some time, or at least may marry, it follows that in all nations in which any value is set on the chastity of women, they are by that very opinion excluded from an active life, which would require them to mingle freely with the other sex. If a single woman were a soldier or a sailor, or followed any other occupation which required her to mingle with men, she could not preserve a reputation for chastity; and if she did preserve her chastity, she would not have the credit of it. If there are any branches of industry in which the males and females freely intermingle, and there are such, it is a necessary consequence that the opinion of the chastity of the females must be unfavorable, and in many cases the opinion must be correct. Usage might establish an indifference to the chastity of women, and they might still be able to get ha-

though generally reputed to be so, and often known to be so; and such a condition of society, from other causes than those here said, is described by Herodotus.

Viewed as a portion of the morality of any nation, such a law is faulty because contradictory to the notion of marriage, which implies a union of the sexes and a shared paternity for every child that

is born. Sexual difference then is the basis for a separation of males and females, and in many of the labours which are need to the existence and sustenance of the state. The union of the male and female in marriage, which implies a joint legal capacity to do acts and relieving her from some duties, which acts as an unmarried woman she might do, and which duties unmarried woman she might owe. Roman system went further, and unmarried women who were of age and free from parental authority a kind of tutelage, not with a view of their legal capacity, but in order to save them from fraud. The basis of this is in some passages stated the general inferiority of the sex, but, however, resolves itself into the use of sex, and the consequent weakness which on that account there is of an being overreached. The Roman law here wiser than the English.

Condition of a married woman in Scotland, and in ancient Rome, named under *Wife*. The reader direct some information on the condition of women in various countries the following work: *L'Instruction des Femmes*, &c., Paris, 1845; but of other works of a like kind must be used with caution, if a man would sinking false inferences from the law of any given country.

WOODS AND FORESTS. A considerable portion of the royal revenue and formerly of the rents and profits of crown lands, which comprised great lordships and houses, together forests and chases; from the forests principal source of profit lay in the

finer or amercements levied for offences against the Forest Laws. The domains lands which were retained by the king, or which came to the crown by forfeiture or otherwise, and were farmed out to subjects, were originally very extensive; but owing to the generosity or the necessities of different kings, so large a part of them was granted away, that the House of Parliament frequently interposed in order to prevent the total alienation of the crown property. William III. had used the power of alienation so profusely, that upon the accession of his successor, it was enacted (1 Anne, st. 1, c. 7) that no grant or lease should be made of any crown lands for a longer term than thirty-one years or three lives, except houses, &c., which might be let for fifty years.

By the 26 Geo. III. c. 87, amended by 30 Geo. III. c. 56, Commissioners were appointed to inquire into the state and condition of the woods, forests, and land revenues belonging to the crown. By the 46 Geo. III. c. 142 (altered by the 50 Geo. III. c. 65), an office of surveyor-general of his Majesty's woods and public buildings was created; but this and some other offices are now incorporated with that of "the Commissioners of her Majesty's Woods, Forests, Land Revenues, Works, and Buildings" (2 Will. IV. c. 1, s. 1), who are commonly called "the Commissioners of Woods and Forests," which office or board owes its present permanent shape to the statute 10 Geo. IV. c. 50 (amended and extended by 2 Will. IV. c. 1; 2 & 3 Will. IV. c. 112; and 2 & 4 Will. IV. c. 69).

The Commissioners, who are not to exceed three in number, are appointed by letters patent (2 Will. IV. c. 1, s. 1). They are to make a declaration (2 & 3 Will. IV. c. 43, s. 2, in lieu of the oath required formerly, 2 Will. IV. c. 1, s. 6) that they will faithfully and diligently execute the duties of commissioners. Their salaries are fixed at 2000*l.* per annum for the chairman or first commissioner, and 1200*l.* for the other two (10 Geo. IV. c. 50, s. 11; 2 Will. IV. c. 1, s. 7). Only one of them is allowed to be a member of the House of Commons (2 Will. IV. c. 1, s. 11).

Their powers are very large. The

whole of the possessions (except advowsons) and land revenues of the crown in England, Ireland (10 Geo. IV. c. 50, s. 8), and Scotland (2 & 3 Will. IV. c. 112; 3 & 4 Will. IV. c. 69) are under their management; but the property therein still remains in the crown. (1 *Q. B. Rep.*, 352.) They are required to observe all the orders and directions of the Lords of the Treasury touching the exercise of their powers (2 Will. IV. c. 1, s. 3).

The Commissioners have the power of appointing and removing various officers, such as receivers, surveyors, &c., whose salaries however are fixed by the Treasury (10 Geo. IV. c. 50, s. 12). They may also appoint stewards of the royal hundreds and manors to hold courts, and different manorial and forestal officers to preserve game, fish, &c.; and they may grant licences to hunt, fish, &c. (*Id.*, s. 14).

They are empowered to grant leases of any part of the crown possessions for thirty-one years (10 Geo. IV. c. 50, s. 22); or, in case of houses, buildings, &c., or building-land, for ninety-nine years (*Id.*, s. 23); but this power of leasing does not extend to the royal forests in England (*Id.*, s. 25), except for the purpose of making railroads (*Id.*, s. 27). The leases must contain certain specified provisions, and the lessees are not to be made punishable for waste, except in leases of mines, and at the option of the Commissioners, in leases for ninety-nine years (*Id.*, s. 27). The leases are to be granted at a rack-rent, and no fine is to be reserved (*Id.*, s. 28), except in building-leases, in which a nominal rent may be reserved for the first three years (*Id.*, s. 30), and a fine may be taken not exceeding one-third of the rent (*Id.*, s. 31).

They may also sell any part of the crown possessions, except the forests (*Id.*, s. 34), according to a mode pointed out (s. 35); and they may also sell rents, or manorial or forestal rights, to corporations, or trustees of incapacitated persons, who have estates subject thereto (ss. 39, 40).

They may exchange or purchase lands, &c. (*Id.*, ss. 42, 52, 98).

They are declared to be exempt from

all personal responsibility as to any covenants or contracts which they may enter into in their official character (*Id.*, s. 17).

All deeds relating to lands, &c. leased, &c. by the authority of the commissioners are required to be enrolled in the office of Land Revenue Records and Inrolments (10 Geo. IV. c. 50, s. 63; 2 Will. IV. c. 1, ss. 16, 18, 21), and to be certified by the commissioners to parliament (10 Geo. IV. c. 50, s. 125); and all conveyances and sales respecting such lands are to be free from stamp and auction duty (10 Geo. IV. c. 50, ss. 67, 68).

The Commissioners are also empowered to give certain notices and claims, and to authorize entries on land for breach of covenant, &c. (10 Geo. IV. c. 50, s. 22), and to compound, in certain cases, for rent (*Id.*, s. 23).

Their accounts are to be audited by the commissioners for auditing public accounts, under the 25 Geo. III. c. 22 (10 Geo. IV. c. 50, s. 19).

The receivers appointed by the Commissioners of Woods and Forests must be land-surveyors (*Id.*, s. 80). They are required to account at stated periods to the Commissioners (*Id.*, s. 81), and to transmit all sums received monthly (s. 84); and they are empowered to distrain for rent (s. 90).

Notwithstanding the management of the crown lands is thus vested in the Commissioners, and the general power of alienation has been taken from the crown, a power is reserved to the crown to grant sites for churches, chapels, and burial grounds, not exceeding five acres in extent, or 1000*l.* in value (10 Geo. IV. c. 50, s. 45); and by 1 & 2 Will. IV. c. 59, s. 1, churchwardens and overseers are empowered, with the consent of the Lords of the Treasury, to inclose a portion not exceeding fifty acres of any forest or waste lands belonging to the crown, lying in or near their parish, for the purpose of cultivating the same for the use of the poor.

Besides this general control over the crown lands, certain powers are given to the Commissioners which are connected with the execution of the Forest Laws. The powers and authorities belonging to the offices of wardens, chief-justice

and justices in eyre (which were abolished upon the termination of the then existing interests by 57 Geo. III. c. 61), are vested in the First Commissioner (10 Geo. IV. c. 50, s. 95); and the commissioners are also empowered to make compensation to parties for old encroachments made upon the royal forests where they have been in uninterrupted possession for ten years (*Id.*, s. 96).

The verderers of the royal forests are also required to make inquiry as to all unlawful inclosures, encroachments, &c. in their courts of attachment, and may impose fines upon the offenders (*Id.*, s. 100), who may however be proceeded against by the ordinary course of law (s. 103). The verderers may appoint regarders, under-foresters, and other officers of the forests and courts (s. 101), and may inquire into their conduct, and fine them for neglect of duty (s. 102). Other penalties may be recovered before a justice of the peace (s. 104); and all such fines and penalties are to be applied to the expenses relating to the forests (s. 105).

As to the general revenue arising from the letting, &c. of the crown lands, the commissioners are directed to pay in the moneys received by them, to a proper account with the Bank of England and Ireland respectively (10 Geo. IV. c. 50, s. 117, 118) and the chartered banks of Scotland (3 and 4 Will. IV. c. 69, s. 17); and the annual income (after certain deductions) is to be carried to the consolidated fund (10 Geo. IV. c. 50, s. 113; 3 & 4 Will. IV. c. 69, s. 16). The transfer of the revenue arising from the crown lands to the consolidated fund is however the subject of a special arrangement between the crown and the subjects, terminating with the life of the king or queen regnant in whose reign it is made.

The 10 Geo. IV. c. 50, contains some provisions peculiar to Ireland. Leases, grants, &c., of any of the small branches of the royal revenue (s. 128), and the powers appertaining to the chancellor and council of the Duchy of Lancaster (s. 130), are exempted from its operation.

The real property of the crown may be thus classified:—

1. Honours, manors, and hundreds, not in lease.

2. Other lands in the occupation of the crown, either for the personal convenience of the king or for the public service.

3. Forests, chaces, and wastes.

4. Lands, tenements and hereditaments, held of the crown by lease.

5. Fee-farm rents, issuing out of lands, tenements, and hereditaments, held of the crown in fee-simple.

Of the first, fourth, and fifth classes it would be impossible to attempt any particular enumeration; the fourth consisted, at the time of passing the statute 26 Geo. III. c. 87 (A.D. 1786), of about 130 manors, 52,000 acres of land in cultivation, 1800 houses in London and Westminster, and 450 houses and other buildings in other parts of England, exclusive of houses demised with manors or forests.

The second class comprises the following royal palaces and houses:—Buckingham Palace; St. James's Palace; the Pavillion at Brighton; Windsor Castle; the palaces of Hampton Court, Kensington, and Whitehall; the King's House at Winchester; the palace at Greenwich (converted into an hospital for seamen); Somerset House (used as public offices); the palace of Westminster (Westminster Hall, including the houses of parliament and courts of law). The following palaces and buildings have been pulled down and their sites used for other purposes:—Carlton House; the Mews; Newmarket Palace. The following parks are also included in this class:—St. James's, Hyde, Bagshot, Bushey, Greenwich, Hampton Court, Richmond, and Windsor.

In the third class are included not only the royal forests which have preserved their *jura regalia*, but several nominal forests and chaces, warrens, wastes, &c. The following is a list of the real forests:—In Berks, Surrey, and Wilts, Windsor Forest; in Essex, Waltham Forest; in Gloucestershire, the Forest of Dean; in Hampshire, Bere Forest, New Forest, and the Forest of Woolmer and Alicheholt; in Northamptonshire, Rockingham, Whittlewood, and Salcey Forests; in Nottinghamshire, Sherwood Forest; in Oxfordshire, Whichwood Forest.

There has arisen incidentally out of the proper duties of the department of Woods and Forests, since it was united

with the Board of Public Works, the important office of providing public walks and access to the national buildings and collections. This branch of administration has only been recognised of late years, and perhaps we owe it to our intercourse with the Continent, and especially with France, that it has been at all acknowledged. Twenty years ago Hyde Park and Kensington Gardens were the only public places of recreation open to the crowded and hard-worked population of London; since then, beside the improvements in those two places, and the formation of new streets and squares in those parts of the metropolis of which the land either belongs to the crown or has been purchased by parliament for public improvements, there have been opened the large gardens of St. James's Park and the Regent's Park; Primrose Hill, at the north of the Regent's Park, and a large piece of land at the north-east end of London, called 'Victoria Park,' have been purchased for public convenience. The palace and grounds of Hampton Court have been repaired and ornamented, and have been thrown open gratuitously to the public, and the collection of pictures has been arranged: for all this the nation is indebted to the department of Woods and Forests.

WOOL. [TARIFF.]

WORKHOUSE. [POOR LAWS.]

WOUNDING. [MAIM.]

WRECK. [FRANCHISE; SHIPS, p. 704.]

WRIT, a law term, which in its proper signification means a *writing* under the king's seal, whereby he confers some right or privilege, or commands some act to be done. Writs are either *patent* (open, commonly called *letters patent*, *litera patentes*), which are not sealed up, but have the great seal attached to them; or *close* (*litera clausa*), which are, or are supposed to be, sealed up. The former are addressed to all persons indiscriminately, generally in these terms—"To all to whom these presents shall come," the latter are directed to some officer or other individual. Of the former kind is the creation of a peer by patent, which is a royal grant of peerage; of the latter, the creation of a peer by writ, which is a

summons to attend the house of peers by the style and title of some barony.

Writ in its ordinary and more limited sense is a term applicable to process in civil or criminal proceedings. Civil writs are divisible into *original* and *judicial*: original writs issue out of the Court of Chancery, and give authority to the courts, in which they are returnable, to proceed with the cause; judicial writs are awarded by the court in which the action is already pending. These are again subdivided into *maine* and *final*. Original writs (which now, except in the few real actions still preserved, have been superseded by the writ of summons) used to contain a *brief* statement of the plaintiff's alleged cause of action; and such a writ was called in law Latin *breve*, in law French *brief*: and this term was afterwards applied to judicial and other writs. Original writs issuing from Chancery were always witnessed, or *tested*, in the name of the king; judicial writs issued from that one of the superior common law courts in which the original writ was made returnable, and were tested in the name of the chief judge of such court. In cases where the plaintiff seeks to recover a sum under 40*s.*, he may bring his suit in the county-court, or court-lane, in which no royal writ is necessary, but the suits therein commence, not by original writ, but by *plaint*, which is a statement of the party's cause of action in the nature of a *declaration*.

There are many kinds of writs, some of the more important of which may be here mentioned. There is the writ to the sheriff of a county to elect a member or members of the Commons' House of Parliament, in case of a vacancy or general election, which issues upon the warrant of the lord chancellor or in certain cases of the speaker of the House of Commons. The writ of *habeas corpus* (*ad subjiciendum*), which is directed to any person who detains another, commanding him to produce the body of the prisoner at such a time and place, together with the cause of his caption and detention, to do, submit to, and receive (*ad faciendum, subjiendum, et recipiendum*) whatever the court or judge by whom the writ is awarded shall think fit. [HABEAS CORPUS.] Then

various other writs of *habeas corpus*, the purpose of bringing up prisoners charged in execution, to give testimony, &c.—the writs of *subpœna ad testandum*, by which a party is commanded to appear at the trial of a cause, give evidence under a nominal pecuniary penalty; and of *subpœna duces non*, by which the party is commanded to bring certain specified documents for the purpose of the trial. There is also writ of *subpœna in equity*, whereby defendant in a suit is commanded to appear and answer the plaintiff's bill. A defendant privileged from the particular court, or from being sued except before another tribunal, is entitled to a writ of *Privilege*, by which the court is required to discontinue the suit. In modern times a party is allowed his privilege without suing out any writ of privilege. See new *Natura Brevium* of the Most Reverend Judge, Mr. Anthony Fitz-Herbert, contains a great variety of writs.

WRIT OF ERROR. There may be writ of error for an alleged mistake in proceedings of a Court of Record. A writ may be for matter of fact or of law. In the case of an alleged error in fact the writ is addressed to the court which has given the judgment and the rectification of the record is left to it. In the case of an alleged error in law, a writ of error must be sued out of the common law side of the Court of Chancery, and it is addressed to the chief justice of the Queen's Bench or Common Pleas, to the chief baron of the Exchequer, one of which courts it is alleged that error has been made. The writ commands the chief justice of the court in which the error is alleged to have been made to send a copy of the record to the Exchequer Chamber to be examined there. A writ of error on any judgment of the Queen's Bench, Common Pleas, or Exchequer is returned only before those judges of the two courts in which the alleged error has not been made (1 Wm. 4. c. 70); and there is no writ of error in the Exchequer Chamber except in the House of Lords.

In criminal cases there is a writ of error in all inferior courts to the Queen's Bench and from that to the House of Lords.

WRIT OF INQUIRY. In cases where a plaintiff seeks to recover a specific chattel (as in the action of *Detinue*), or a specific sum of money (as in *Debt*), if the defendant allows judgment to go against him by default, this is considered as an admission that the plaintiff is entitled to what he claims; and the judgment therefore is final in the first instance, provided the plaintiff is content to take a small nominal sum for the damages resulting from the detention of the chattel or the debt. But where a plaintiff only seeks to obtain damages for an injury done to his person or his real or personal estate, or for the non-performance of a promise, if the defendant lets judgment go by default, this, though an admission that the plaintiff has a cause of action, does not operate as an admission of the amount of damages to which he is entitled; and such judgment is called interlocutory. In such cases, and also where the plaintiff seeks to recover substantial damages for the detention of a chattel, or of a debt, the intervention of a jury is required in order to ascertain for what damages the plaintiff is entitled to have final judgment. For this purpose, a judicial process, called a *writ of inquiry*, issues to the sheriff commanding him to summon a jury to inquire what damages the plaintiff has sustained. If the plaintiff offer no evidence before the jury, a verdict must be found for nominal damages, as existence of some damage is admitted.

When the *inquisition* (or finding of the jury) is returned, the plaintiff is entitled to judgment for that amount. In some cases where the amount of damages is readily ascertainable, as being a mere matter of calculation, such as in actions upon bills of exchange, upon covenants for the payment of a certain sum, and the like, the court, instead of directing a writ of inquiry, will refer the matter to one of its officers to compute the amount of principal and interest due to the plaintiff, for writs of inquiry are merely to inform the court, who may assess the damages themselves, if they think proper, after interlocutory judgment has been obtained.

WRIT OF SUMMONS. [Writ.]

WRIT OF TRIAL. All trials of causes in the superior courts took place formerly either at *bar* before the whole court, or at *nisi prius* before one of the judges of the court, or a judge or serjeant named in the commission of assize; but now, by the 3 and 4 W. IV., c. 42, s. 17, in any action depending in any of the superior courts for any *debt* or *demand* in which the sum sought to be recovered and indorsed on the writ of summons shall not exceed 20*l.*, the court, or a judge (if satisfied that the trial will not involve any difficult question of fact or law), may order the trial to take place before the sheriff of the county where the action is brought, or some judge of an inferior court, and for that purpose a writ shall issue (called the Writ of Trial) directed to the sheriff or such judge, commanding him to try the cause before a jury, and to return such writ with the finding of the jury thereon indorsed. The statute applies only to actions for a *debt* or *demand* indorsed on the writ of summons; it does not therefore extend to cases where the action is brought for a wrong, or where the demand, being for unliquidated damages, the amount claimed cannot properly be indorsed on the writ of summons. (3 Mann. and Gra. 850.) The proceedings under the writ of trial, when directed to the sheriff, usually take place before his under sheriff or other his deputy; and they are conducted in the same manner as at a trial at *nisi prius*: and the court will grant a new trial for the same causes as if the trial had been before one of the superior judges; but a new trial will not be granted upon the ground that the verdict is against the evidence, where the amount of such verdict is less than 5*l.*, unless such verdict be manifestly *perverse*.

WRITER, in Scotland, is a term of nearly the same meaning as attorney in England, and is generally applied to all legal practitioners who do not belong to the bar, although it has of late become customary to substitute for it the term solicitor. As special exceptions, the body who in Edinburgh enjoy, concurrently with writers to the signet, the privilege of conducting cases before the Court of Session, the Court of Justiciary, &c., are

called solicitors of supreme courts (abbreviated S. S. C.), and the practitioners before the sheriff court of Aberdeen are by local custom called advocates. In each county there is generally a society of writers privileged to practise in the sheriff court and in the other local judicatories, who frame their own bye-laws, and regulate the terms of admission to their body. Individually, they are responsible for their conduct to the local judges before whom they practise; and as bodies they are, on the one hand, protected from the infringement of their privileges by unlicensed persons, and, on the other, liable to judicial control if they attempt unduly to restrict the means of admission to their privileges.

WRITER TO THE SIGNET, abbreviated W. S., is the designation of the members of the most numerous and important class of attorneys or procurators in Scotland. The writers to the signet enjoy, in common with the solicitors of supreme courts, and with one or two smaller bodies, the privilege of conducting cases before the Court of Session, the Court of Justiciary, and the Commission of Teinds. Their peculiar privilege, however, is that of preparing the writs which pass the royal signet. The signet was a seal or die under the control of the secretary of state, with which the writs by which the king directed parties to appear in court, or ordered them to obey the decrees given against them, and other executive instructions, were stamped for the sake of authentication. In the sixteenth century, the persons who were entitled to present the writs which received the impression of the signet are supposed to have been the clerks in the secretary of state's office; and it is not known how or precisely at what time the persons who transacted this department of official business became converted into a body of private practitioners. Since the union of 1707, the signet has been under the disposal of the Court of Session; but down to about the middle of last century the keeper of the signet was deputed by the secretary of state for the home department. Since that time he has been appointed under the great seal.

and he names a deputy, who is a member of the society of writers to the signet, and by usage presides at their meetings. In the general case the summons by which an ordinary action is brought into the Court of Session requires to be signed, and to be, as a preliminary, signed by a writer to the signet; although a member of one of the other privileged bodies may conduct the case. Advococation [Advocation] and some other analogous classes of procedure, required formerly to have the interposition of the signet; but this step in the procedure was abolished by 1 and 2 Vict. c. 86. In the various forms of execution against person and property, the signet was, until lately, a prominent feature; but, unless in some special cases, it has been dispensed with by the Act 1 and 2 Vict. c. 114. In these departments of legal practice the writers to the signet now possess few privileges which are not shared by the other practitioners before the supreme courts. They still retain their privileges as to summonses, and they have the exclusive right of presenting signatures in exchequer, or of presenting, through the judges acting in exchequer, the indorsed drafts of the writs passing under the great and other seals in Scotland appended to crown charters, appointments to offices, &c. They have thus a monopoly of the business of making up the titles of the crown vassals or freeholders in Scotland, and this circumstance, added to their skill and respectability as a body, has put the greater part of the conveyancing of the country in their hands. The society require of their inductants an apprenticeship of five years, with a curriculum of university study, which includes two sessions of attendance, the one at Latin and the other at some other literary class, and four courses of attendance at law classes. The expenses connected with apprenticeship amount to about 380*l.*, and additional fees to the extent of 140*l.* are incurred on entering the society. The writers to the signet possess a library, amounting, it is supposed, to between forty and fifty thousand bound volumes, distributed in two large halls. The collection was commenced in 1755, by the purchase of some new books, to which works on other sub-

jects were added in 1778. It is supported by an annual grant by the society, which fluctuates with the state of its funds, and has in some years exceeded 2000*l.* The eminent men who have successively acted as librarians, have made praiseworthy and successful efforts to obtain the most useful works, and to prevent the funds from being wasted in the purchase of books at random. They have kept in view in many cases the acquisition of those books which are wanting to the advocates' library, and as the two institutions are within the same range of buildings, and are both liberally laid open to those who wish to consult books for literary purposes, the writers to the signet have thus performed an essential service to the literature of Edinburgh.

Y.

YEAR-BOOKS. [Reports.]

YEOMAN, YEOMANRY CAVALRY. Of the various derivations proposed for the word yeoman—*jung man*, young man; *jemand*, any one; *gemein*, common; *goodman*—perhaps "*gemein*" or "*common*" is the most probable. A yeoman is at the head of the classes beneath gentlemen; he is in legal sense a *probus et legalis homo*, who may dispense of his own freehold 40*s.* yearly. In an ancient statute (20 Ric. II. c. 2, 1326) they ("*Vadlez appellez yomen*") are prohibited, in common with all other persons under the rank of an esquire, from wearing any lord's livery unless they form part of the lord's household; and Fortescue (c. 29), who wrote somewhat more than half a century after the passing of that act, says that there are yeomen (*valeeti*) who can spend out of their patrimony 600 shutes a-year, a sum equal, according to some computations, to 130*l.* The term yeoman is used in inferior offices about the palace; and there is a body-guard called the yeomen of the king's guard, established by Henry VII., and by some writers considered the first approach towards a standing army, which attends the king upon state occasions. It consists of 100 men habited in the costume of the sixteenth century, and commanded by a captain and other officers. The vulgar name of beef-eaters,

by which they are known, is a corruption of buffeters, from their having been stationed in state banquets at the buffet or sideboard. During the long war consequent on the French revolution, and whilst this country was threatened with invasion, there was embodied in almost every county a mounted force under the name of Yeomanry Cavalry. It was subject to the same regulations, when on service, as the militia, and consisted of volunteers, of whom a large proportion were gentlemen or wealthy farmers; they were mounted and in most respects equipped at their own expense; but they received pay whilst in actual service, and there was some small allowance made by the crown towards the regimental expenses, such as the permanent pay of non-commissioned officers. They were commanded by the lord-lieutenant of the county, who granted commissions to the subaltern officers.

The first act for embodying corps of volunteers was passed in the spring of 1794 (34 Geo. III. c. 31). It enacts that all persons who may, during the war then raging, voluntarily enrol themselves under officers holding commissions for that purpose from the king or from the lieutenants of counties, shall be entitled to receive the pay, and shall be subject to the same discipline by courts martial, composed of volunteer officers, as troops of the line, if, on being called upon by the king in case of actual invasion or appearance of invasion, they shall march out of their own counties or assemble within it to repel such invasion; or if they shall march at the command of the king or of the lieutenant or the sheriff of the county to suppress riots or tumults within it or the adjacent counties. The

act exempts volunteers from the militia: it gives power to magistrates to billet the non-commissioned officers and drummers on tavern-keepers; and grants to commissioned officers a right to half-pay, and to non-commissioned officers the benefit of Chelsea Hospital if they are disabled when on actual service.

In the year 1798 another act was passed (38 Geo. III. c. 51), to facilitate the training of volunteer corps of cavalry, who are called in the title to the act, though not in the body, "yeomanry cavalry." It authorizes the billeting of the privates when called out to be trained, and it exempts from taxation the horses used in the service. After the short peace in 1802, the provisions of the preceding acts were renewed (42 Geo. III. c. 66), and the existence of the volunteer corps of cavalry (called by this act for the first time "yeomanry cavalry") was revived or continued, without reference, as in the previous statutes, to the then existing war.

Of late years, although many of these yeomanry regiments still exist, they are rather maintained for the purpose of amusement and good fellowship than for any practical service.

According to a Parliamentary Return, there were, in 1836, 338 troops of yeomanry cavalry, including 1155 officers and 18,120 men, at a cost of about 100,000*l.* a-year to the nation. In 1838, the number of troops was reduced to 251, and the privates to 13,594. Between the years 1816 and 1838, the average annual expense of maintaining the yeomanry corps was 128,000*l.*; the greatest cost being in the years 1820, 1821, and 1822, when the annual average exceeded 192,000*l.*

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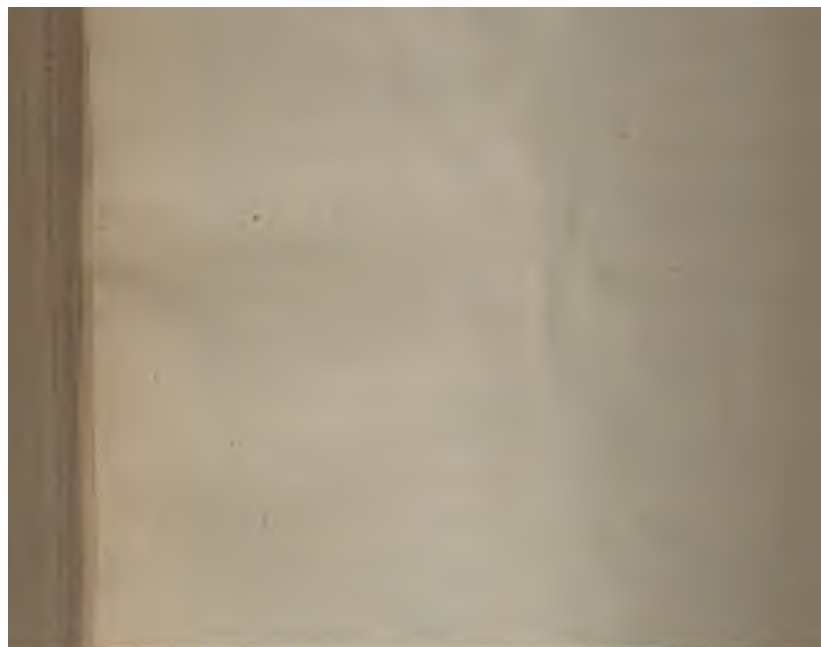
VAGRANT.

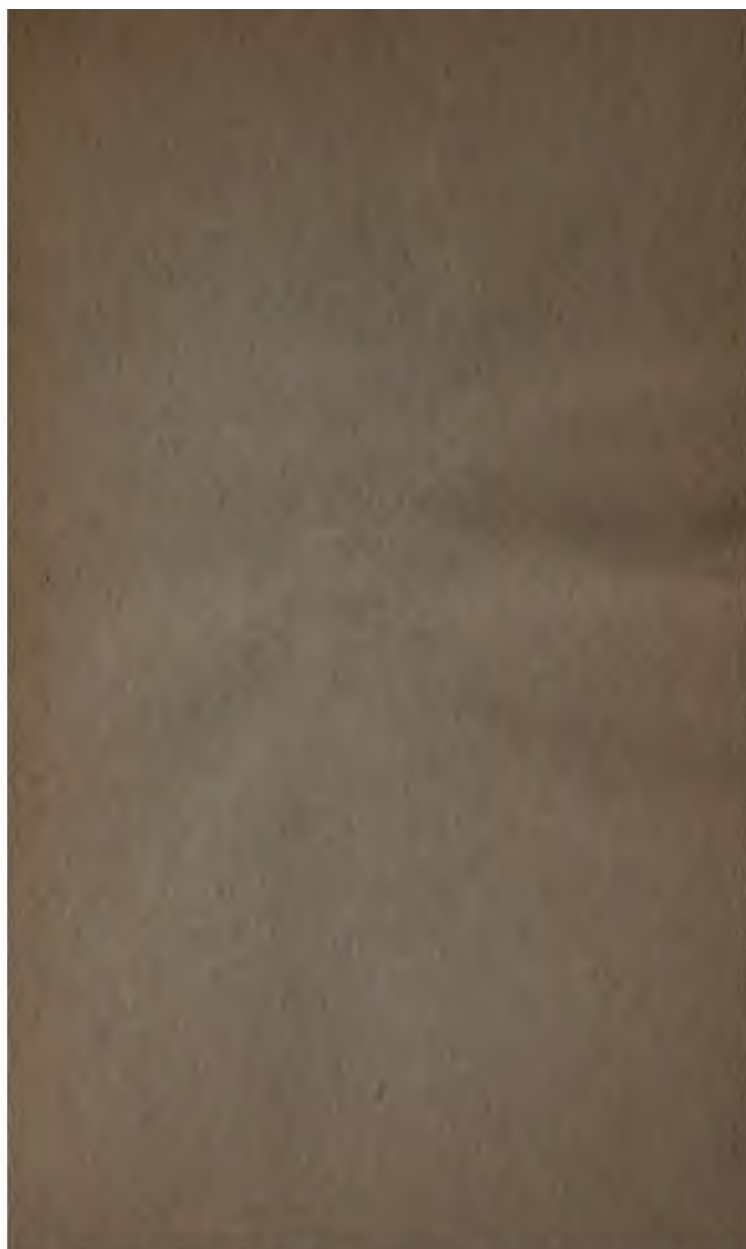
Value. [Political Economy; Price.]
 Vassal. [Fudal System.]
 Vendor and Purchaser.
 Venire Facias.
 Ventre Inspiciendo, Writ de.
 Venue. [Forests.]
 Verderer. [Forest Laws; Woods and
 Verdict. [Jury.]
 Vested. [Will and Testament, p. 912.]
 Vested Estate. [Remainder.]
 Vesting, Vested Interest. [Legacy.]
 Vestry. [342.]
 Vicar, Vicarage. [Benefice, pp. 341,
 Vicar Apostolic. [Catholic Church.]
 Vice Chancellors. [Chancery.]
 Victuallers, Licensed. [Alehouse.]
 View of Frankpledge. [Leet.]
 Vill. [Town.]
 Villein, or Villain.
 Villeinage.
 Viscount.
 Visitor. [College; Schools, Endowed;
 Uses, Charitable and Superstitious.]
 Visitation. [Archdeacon; Bishop.]
 Voting.

Voyage. [Bottomry; Ships.]

WAGER. [Gaming.]
 Wager-Policy.
 Wager of Battle. [Appeal.]
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 Waif.
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 Wapentake. [Shire.]
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 Wards. [Municipal Corporations, p. 58.]
 Wards, Court of.
 Wardship. [Knight's Service; Tenure.]
 Warehousing System.
 Warrant.
 Warrant of Attorney and Cogent.
 Warren. [Cogent.]
 Waste.
 Water and Watercourses.
 Way.
 Wealth. [Political Economy.]
 Wealth of Nations. [Political Economy.]
 Weights and Measures.
 Weir.
 Westminster Assembly. [Assembly of
 Divines; Established Church.]
 Whig.
 Wife; Husband and Wife.
 Wife, Roman. [Marriage.]
 Wife (Scotland).
 Will and Testament.
 Will, Roman.
 Will (Scotland).
 Wines and Spirits.
 Witness. [Evidence.]
 Woman.
 Woods and Forests.
 Wool. [Tariff.]
 Workhouse. [Poor Laws.]
 Wounding. [Maim.]
 Wreck. [Franchise; Ships, p. 704.]
 Writ.
 Writ of Error.
 Writ of Inquiry.
 Writ of Summons. [Writ.]
 Writ of Trial.
 Writer.
 Writer to the Signet.
 YEAR-BOOKS. [Reports.]
 Yeoman.
 Yeomanry Cavalry.







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